

SENATE RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

Table of Contents

2008 Legislative Session

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - Rules Governing Licensing

Docket No. *13-0104-0701*3

13.01.08 - Rules Governing the Taking of Big Game Animals in the State of Idaho

Docket No. *13-0108-0701*12

13.01.09 - Rules Governing the Taking of Game Birds in the State of Idaho

Docket No. *13-0109-0701*40

13.01.12 - Rules Governing Commercial Fishing in the State of Idaho

Docket No. *13-0112-0701*52

13.01.17 - Rules Governing the Use of Bait for Taking Big Game Animals

Docket No. *13-0117-0701*58

IDAPA 20 - DEPARTMENT OF LANDS

20.02.06 - Administration of Idaho's Reforestation Law

Docket No. *20-0206-0701 (Chapter Repeal)*62

20.02.12 - Rules of the Community and Urban Forestry Trust Account

Docket No. *20-0212-0701 (Chapter Repeal)*64

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.20 - Rules Governing the Administration of Park and Recreation Areas and Facilities

Docket No. *26-0120-0701*66

26.01.30 - Idaho Safe Boating Rules

Docket No. *26-0130-0701*70

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - Rules For Administration Of Wastewater Treatment Facility Grants

Docket No. *58-0104-0701*73

58.01.07 - Rules Regulating Underground Storage Tank Systems

Docket No. *58-0107-0701*97

SENATE RESOURCES & ENVIRONMENT COMMITTEE

ADMINISTRATIVE RULES REVIEW

Table of Contents

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.10 - Rules Regulating The Disposal of Radioactive Materials Not Regulated Under The Atomic Energy Act of 1954, As Amended

Docket No. *58-0110-0701*113

58.01.20 - Rules for Administration of Drinking Water Loan Program

Docket No. *58-0120-0701*119

58.01.22 - Rules for Administration of Planning Grants for Public Drinking Water Facilities

Docket No. *58-0122-0701*142

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.04 - RULES GOVERNING LICENSING

DOCKET NO. 13-0104-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Amend references to the Disabled Persons Motor Vehicle Permit License to use terminology consistent with statutory amendment (S 1011). Amend the outfitter allocation rule to clarify the allocation process, to address outfitter concerns, and to be consistent with discussions with Legislative committees. Amend references to the Clearwater deer tag to refer to the White-tailed deer tag.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 259 to 264.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Sharon Kiefer (208) 287-2780.

DATED this 13th day of November, 2007.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut / P.O. Box 25
Boise, Idaho 83707

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION
Rules Governing Licensing

Docket No. 13-0104-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **August 14, 2007**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Amend references to the Disabled Persons Motor Vehicle Permit License to use terminology consistent with statutory amendment (S 1011). Amend the outfitter allocation rule to clarify the allocation process, to address outfitter concerns, and to be consistent with discussions with Legislative committees. Amend references to the Clearwater deer tag to refer to the White-tailed deer tag.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to disabled persons, outfitters, and hunters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to comply with statutory amendments and the need to comply with printing schedules for the 2007 hunting seasons.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Rules Governing Licensing

**Docket No. 13-0104-0701
PENDING RULE**

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Sharon Kiefer (208) 287-2784.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 21st day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.

The Idaho Fish and Game Commission is authorized under Sections 36-104(b) and 36-301, 36-401 through 412, and 36-1101, Idaho Code, to adopt rules concerning the issuance and sales of licenses. ~~(3-30-01)~~()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

These definitions will provide clarity and consistency in enforcement of these rules. (7-1-93)

01. Authorized Corporate Representative. Any shareholder in a corporation, designated in writing by the corporation as the eligible applicant, who is in actual physical control of the eligible property. (7-1-93)

02. Blind Person. A blind person is one who has a medically documented loss or impairment of his or her vision and includes any person whose visual acuity with correcting lens does not exceed twenty/two hundred (20/200) in the better eye, or whose vision in the better eye is restricted to a field which subtends an angle of not greater than twenty (20) degrees. (7-1-93)

03. Domicile. The term "domicile" means the place where an individual has his true, fixed, permanent home and to which place he has the intention of returning whenever he is absent. An individual can have several dwelling places, but only one (1) domicile. Factors to consider to establish domicile include, but are not limited to: (7-1-93)

a. What address does the person use on tax returns and where does the person file a state resident income tax return? (7-1-93)

b. Where is the person registered to vote? (7-1-93)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Rules Governing Licensing

Docket No. 13-0104-0701
PENDING RULE

- c. Where does the person and his immediate family live? (7-1-93)
- d. Where does the person have his mail sent or forwarded to? (7-1-93)
- e. Does the person remain listed in the telephone directory? (7-1-93)
- f. Where does he register his automobiles? (7-1-93)
- g. Where has the person claimed a homeowner exemption on a personal residence? (7-1-93)
- h. Where does he have a driver's license? (7-1-93)
- i. Where are his regular physicians and dentists located? (7-1-93)

04. Disabled. A person is disabled if they are deemed disabled by one (1) or more, but not necessarily all of the following: the railroad retirement board pursuant to Title 45 of the United States Code, or certified as eligible for Federal Supplemental Security Income (SSI); or Social Security Disability Income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or if a physician has certified any of the following - that a person has lost the use of one (1) or both lower extremities or both hands, or is unable to walk two hundred (200) feet or more unassisted by another person, or is unable to walk two hundred (200) feet or more without the aid of a walker, cane, crutches, braces, prosthetic device or a wheelchair, or is unable to walk two hundred (200) feet or more without great difficulty or discomfort due to the following impairments - neurological, orthopedic, respiratory, cardiac, arthritic disorder, blindness, or the loss of function or absence of a limb. (3-8-07)

05. Eligible Applicant. A physically ~~handicapped~~ disabled person certified by a physician licensed in the state in which the ~~handicapped~~ disabled person resides, as meeting one (1) or more of the criteria set forth in Section 36-1101~~(a)~~~~1 through 3~~, Idaho Code, and one who is capable of holding, or holding and firing, without assistance from other persons, legal hunting and fishing equipment. ~~(3-8-07)~~()

06. Eligible Property. At least six hundred forty (640) acres of land in one (1) controlled hunt unit determined by the Department to be valuable for habitat or propagation purposes for deer, elk, and/or antelope, whether owned by one (1) or more persons, a partnership, or corporation. It shall not include any government lands. (4-5-00)

07. Landowner. Any person or corporation whose name appears on a deed as the owner of eligible property or whose name appears on a contract for sale of eligible property as the purchaser. (10-26-94)

08. Permanent Disability. Permanent disability is defined as a medically determinable physical impairment, which a physician has certified that the condition has no expectation for a fundamental or marked change at any time in the future. (3-8-07)

09. Resident. The term "resident" is defined in Section 36-202(r), Idaho Code.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION
Rules Governing Licensing

Docket No. 13-0104-0701
PENDING RULE

(7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

303. ~~HANDICAPPED~~ DISABLED PERSONS MOTOR VEHICLE HUNTING PERMITS.

01. Applications for ~~Handicapped~~ Disabled Motor Vehicle Hunting Permits.

(7-1-93)(____)

a. Applications for ~~handicapped~~ disabled motor vehicle hunting permits shall be on a form prescribed by the Department or an individual may present their valid Idaho driver's license in lieu of the prescribed department form if the individual meets the disability requirements of Section 49-117(7)(b), Idaho Code, except for blindness, and the driver's license is appropriately marked as disabled. Only eligible applicants may submit such applications. (5-3-03)(____)

b. Individuals using the department form for a ~~handicapped~~ disabled motor vehicle hunting permit must complete and sign the application form. Nonresident applicants must have their signature notarized. Each application submitted on the department form shall be accompanied by certification from the applicant's physician, physician assistant, or nurse practitioner stating which of the criteria set forth in Idaho Code, Section 36-1101 qualifies the applicant and why. The physician, physician assistant, or nurse practitioner shall also certify that the applicant is capable of holding and firing, without assistance from other persons, ~~legal firearms or archery equipment~~ legal hunting equipment. If the physician, physician assistant, or nurse practitioner is not licensed to practice in Idaho, a photo copy of the physician, physician assistant, or nurse practitioner's medical license must accompany the application. Physicians, physician assistants, or nurse practitioners must check the appropriate box for short-term or long-term disability on the application. If the disability is short term and physical mobility is expected to improve, the physician, physician assistant, or nurse practitioner must include a date when the disability is expected to end. (3-20-04)(____)

02. ~~Handicapped~~ Disabled Motor Vehicle Hunting Permits.

(7-1-93)(____)

a. ~~Handicapped~~ Disabled motor vehicle hunting permits shall be issued only by the Director of the Department or his representative and shall expire no later than December 31 of the fifth year following the date of issuance. (5-3-03)(____)

b. The permit shall be prominently displayed on any vehicle from which the person is hunting. Where applicable, the permit shall be displayed on the driver's side of the dashboard of the parked vehicle, suspended from the rearview mirror, or otherwise displayed so as to be in plain view of any person looking through the windshield of the vehicle. (7-1-93)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Rules Governing Licensing

Docket No. 13-0104-0701
PENDING RULE

(BREAK IN CONTINUITY OF SECTIONS)

500. NONRESIDENT DEER AND ELK TAG OUTFITTER SET-ASIDE.

01. Tags. The following number of nonresident deer tags and nonresident elk tags shall annually be set aside and reserved for sale to persons who have entered into an agreement to utilize the services of an outfitter who is licensed under Chapter 21, Title 36, Idaho Code. For the each Hunting Season: (3-20-04)

- a. One thousand nine hundred (1,900) deer tags (regular or ~~Clearwater~~ White-tailed);
(~~7-1-99~~)()
- b. Eighty-five (85) S.E. Idaho Area deer tags; (3-20-04)
- c. Two thousand four hundred (2,400) elk tags (A or B tags for all zones; (3-20-04)

02. Restrictions. These tags shall be sold on a first-come, first-serve basis through June 30 of each year. Application for purchase of these tags shall be made by the outfitter for the nonresident on a form prescribed by the Department. The application shall be accompanied by the appropriate license fees and a certification by the outfitter that the nonresident hunter has a contract to hunt with the outfitter making application. (7-1-93)

03. Unsold Tags. Any tags not sold by July 1 of each year shall be sold by the Department to nonresidents on a first-come, first serve basis. If there is a waiting list of individuals desiring a tag for the species available, those individuals will be first served. Application shall be made only to the Headquarters office of the Department of Fish and Game in Boise, Idaho. (7-1-99)

501. -- 504. (RESERVED).

505. DEER AND ELK TAG ALLOCATION.

01. Allocation of Tags. Pursuant to Idaho Code, Section 36-408, the Fish and Game Commission may allocate a number of deer and/or elk tags for use by hunters with signed agreements with licensed outfitters in zones with limited numbers of tags. The allocation will be calculated on a zone basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, nonoutfitted nonresident hunters, and outfitted hunters. When the number of hunters in a general hunt unit or zone becomes restricted, the Department will calculate the initial number of allocated tags for each zone using the Idaho Outfitters and Guides Licensing Board's records of average historic use during the previous five (5) year period. Where it is biologically feasible, any reductions in the number of tags available within a zone which exceeds twenty percent (20%) will be spread over a three (3) year period with a maximum reduction of fifty percent (50%) taken in the first year and twenty-five percent (25%) in the second year. When an area becomes controlled, hunt application and eligibility rules will apply to allocated tags in controlled hunts. Only those units or zones with licensed outfitted areas with historic use will be considered for tag allocation. (3-8-07)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Rules Governing Licensing

Docket No. 13-0104-0701
PENDING RULE

02. Controlled Hunt Areas. Only those controlled hunt areas with historic licensed deer and/or elk outfitted area(s) may be considered for a tag/permit allocation. The allocation will be calculated on a controlled hunt area basis with reductions or increases in hunting opportunities to be proportionate among resident hunters, non-outfitted nonresident hunters, and outfitted hunters. (3-8-07)

a. The number of allocated tags will be in addition to from the number of tags authorized by the Commission within each controlled hunt area with historic licensed deer and/or elk outfitter areas. (3-8-07)

b. Prior to submitting an application for an outfitter allocated controlled hunt, the applicant must have a written agreement with an outfitter licensed in the hunt area. Successful applicants of an outfitter allocated controlled hunt must hunt with an outfitter licensed for the hunt area. The outfitter must purchase the successful applicant's permit and tag by August 20. Successful applicants authorize the Department to provide names and addresses to the outfitter(s) licensed for that controlled hunt. (3-8-07)

c. Successful applicants who do not want to participate in the outfitted hunt can decline the hunt upon written notification to the Department. Those declining the hunt will then be eligible to participate in a general season or leftover controlled hunt. Those drawing an outfitted controlled hunt and then declining the controlled hunt will be subject to the appropriate waiting period. (5-3-03)

d. Successful applicants that do not secure the services of an Idaho licensed outfitter and have not purchased the controlled hunt permit and tag by August 20 will forfeit the opportunity to purchase a controlled hunt permit. The forfeited controlled hunt permit will then be listed as a leftover permit. The Department will inform the Idaho Outfitters and Guides Board that a permit is available. After securing a client, the outfitter(s) may then purchase the leftover controlled hunt permit at a Department regional or headquarters office. (5-3-03)

e. The number of allocated tag/permits will be determined by using one (1) of the following options: (3-30-01)

i. The number of allocated tags available within the controlled hunt area will be no less than one (1) tag and no more than three percent (3%); or (____)

ii. The number of tags available within the controlled hunt area will be based on the average historic use during the previous five (5) year period and calculated tag numbers will be rounded up when permits equal or exceed zero point six (0.6) and rounded down when permits are less than zero point six (0.6); or (3-30-01)

iii. No tags will be allocated. (7-1-99)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Rules Governing Licensing

Docket No. 13-0104-0701
PENDING RULE

(BREAK IN CONTINUITY OF SECTIONS)

600. NONRESIDENT DEER AND ELK TAG QUOTAS.

01. Tag Quotas. The following number of deer tags and elk tags shall be set aside annually and reserved for sale to nonresidents: (3-20-97)

a. Twelve thousand eight hundred (12,800) regular or ~~Clearwater~~ White-tailed deer tags; (4-6-05)()

b. Twelve thousand eight hundred fifteen (12,815) A or B elk tags for all zones; (3-20-04)

c. One thousand two hundred (1,200) S.E. Idaho area Deer tags. (7-1-98)

02. Exceptions. Sales of nonresident deer and elk tags to the following persons shall not be counted in the quota: (7-1-93)

a. Unqualified Residents: Persons who have moved into Idaho and by notarized affidavit show proof of their intent to become bona fide Idaho residents but are not yet qualified to purchase a resident license. (7-1-93)

b. Designated Buyers: Nonresident tag buyers who return their unused nonresident deer or elk tag and a notarized affidavit stating that the tag buyer has not hunted may designate another nonresident to purchase an additional tag. If the original buyer does not make a designation and has retained an outfitter or guide, the outfitter or guide may make the designation. The designated buyer must pay the regular fee for the replacement tag. If no designation is made by either the original buyer or the outfitter or guide, the Department may sell the replacement tag on a first-come, first-serve basis. (7-1-93)

c. Successful nonresident controlled hunt applicants who have not purchased a tag as of the date of the controlled hunt drawing. (7-1-93)

d. Junior mentored tag holders. (3-20-04)

03. Refunds. The fee for any nonresident license (as defined in Section 36-202(z), Idaho Code) shall not be refunded for any reason except as follows. (7-1-98)

a. Hunting license and general season deer and elk tag refunds due to death, illness/injury or military deployment of licensee. Non-resident general season deer or elk tag fees and prerequisite hunting license fee and controlled hunt deer and elk tag fees may be refunded for death of licensee; illness or injury of licensee which totally disabled the licensee for the entire length of any applicable hunting season; or military deployment of licensee due to an armed conflict. Refund must be substantiated by death certificate, published obituary, written justification by a licensed medical doctor, copy of military orders, or other similar substantiating documents. The hunting license fee will not be refunded if it was used to apply for any controlled hunt or to purchase a turkey, mountain lion, or bear tag. The amount refunded will be the amount

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Rules Governing Licensing

**Docket No. 13-0104-0701
PENDING RULE**

of the applicable deer or elk tag and hunting license less all issuance fees and a fifty dollar (\$50) processing fee. The refund request must be postmarked on or before December 31 of the calendar year in which the license and tags were valid. (4-6-05)

b. General season and controlled hunt deer and elk tag refunds for other than death, illness/injury, or military deployment of licensee. Non-resident general season and controlled hunt deer or elk tag fees may be refunded for any reason other than death of the licensee; illness or injury of licensee which totally disables the licensee for the entire length of all applicable seasons; or military deployment of licensee due to an armed conflict. The request for the refund must be postmarked in the year in which the tag is valid. The hunting license fee will not be refunded. The refund will be based on the following sliding scale as a percent of the deer or elk tag fee.

Postmarked	Percent of Fee Refunded
Before April 1	- 75%
in April through June	- 50%
in July and August	- 25%
September through December	- 0%

(4-6-05)

c. Department Error. The Department determines that a Department employee made an error in the issuance of the license. (7-1-98)

d. Submission Requirements. All refund requests must be in writing and be accompanied with the original copy of the license or tag. (7-1-98)

e. Effective. These changes will be effective with the 1997 licenses and tags. (7-1-98)

04. Sale of Unsold Nonresident Deer and Elk Tags to Residents. Any unsold nonresident deer or elk tags may be sold to residents and to nonresidents as a second tag, at the nonresident deer or elk tag price, beginning September 1. All privileges and restrictions associated with the use of the nonresident deer or elk tag will apply equally to residents who purchase a nonresident deer or elk tag. (3-15-02)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 13 - FISH AND GAME COMMISSION

**13.01.08 - RULES GOVERNING THE TAKING OF BIG GAME
ANIMALS IN THE STATE OF IDAHO**

DOCKET NO. 13-0108-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 265 through 285.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Brad Compton (208) 287-2756.

DATED this 13th day of November, 2007.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut / P.O. Box 25
Boise, Idaho 83707

***THE FOLLOWING NOTICE PUBLISHED WITH THE
TEMPORARY AND PROPOSED RULE***

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION
Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

EFFECTIVE DATE: The effective date of the temporary rule is **March 12, 2007**.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101(a), Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Amend the legal weapon definitions to:

- 1) Allow lighted reticles powered by battery or tritium for telescopic sights;
- 2) Increase the let-off restriction for compound bows;
- 3) Allow the use of lighter arrows and bolts;
- 4) Amend the minimum length for arrows and bolts;
- 5) require loose powder for muzzleloaders;
- 6) Require muzzleloader projectiles to be within a minimum diameter of the bore diameter;
- 7) Prohibit 209 primers for muzzleloader seasons; and
- 8) Require an exposed pivoting hammer and exposed ignition system for muzzleloader seasons.

Add Units 49, 57 and 59 to the list of Big Game Management Units with motorized vehicle use restrictions and delete controlled hunt boundary descriptions which are set by proclamation and published in the hunting brochure.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to outfitters and hunters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION
Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to comply with statutory amendments and the need to comply with printing schedules for the 2007 hunting seasons.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brad Compton (208) 287-2756.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 21st day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

410. UNLAWFUL METHODS OF TAKE.

No person shall take big game animals as outlined in this section. (7-1-93)

01. Firearms. (7-1-93)

a. With any firearm that, in combination with a scope, sling, and/or any other attachments, weighs more than sixteen (16) pounds. (7-1-93)

b. With any shotgun using any shot smaller than double-aught (#00) buck. (7-1-93)

c. With any rimfire rifle, rimfire handgun or any muzzleloading handgun, EXCEPT for mountain lion. (7-1-93)

d. With a fully automatic firearm. (10-26-94)

e. With any electronic device attached to, or incorporated in, the firearm (including handguns and shotguns) or scope; except scopes containing battery powered or tritium lighted reticles are allowed. (~~3-30-01~~)()

02. Bows, Crossbows, Arrows, Bolts, Chemicals or Explosives. (3-20-97)

a. With arrows or bolts having broadheads measuring less than seven-eighths (7/8) inch in width and having a primary cutting edge less than fifteenth-thousandths (0.015) inch thick. (7-1-93)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

- b.** With any bow having a peak draw weight of less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of less than one hundred-fifty (150) pounds. (3-20-97)
- c.** With any chemicals or explosives attached to the arrow or bolt. (7-1-93)
- d.** With arrows or bolts having expanding broadheads. (7-1-93)
- e.** With arrows or bolts having barbed broadheads. A barbed broadhead is a broadhead which has any portion of the rear edge of the broadhead forming an angle less than ninety (90) degrees with the shaft or ferrule. (7-1-93)
- f.** With any electronic or tritium-powered device attached to, or incorporated into, an arrow, bolt, crossbow, or bow. (3-30-01)
- g.** With any bow capable of shooting more than one (1) arrow at a time. (7-1-93)
- h.** With any compound bow with more than ~~sixty~~ eighty-five percent (~~60~~85%) let-off. (7-1-93)()
- i.** With an arrow and broadhead, or bolt and broadhead, with a combined total weight of less than ~~four~~ three hundred (~~400~~300) grains. (3-20-97)()
- j.** With an arrow less than ~~twelve~~ twenty-four (~~12~~24) inches or a crossbow bolt less than twelve (12) inches in length from the broadhead to the nock inclusive. (3-30-01)()
- k.** With an arrow wherein the broadhead does not proceed the shaft and nock. (3-30-01)
- l.** During an *Archery Only* season, with any firearm, crossbow (except holders of handicapped archery permits), or other implement other than a longbow, compound bow, or recurve bow, or: (3-30-07)
- i.** With any device attached that holds a bow at partial or full draw (except holders of handicapped archery permits). (3-30-07)
- ii.** With any bow or crossbow equipped with magnifying sights. (3-20-97)
- m.** During a *Traditional Archery Only* season, with any firearm, crossbow, or other implement other than a longbow or recurve bow, or: (3-15-02)
- i.** With an arrow not constructed of wood or fletched with non-natural material. (3-15-02)
- ii.** With any bow equipped with sights. (3-15-02)
- n.** With any crossbow pistol. (3-20-97)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

03. Muzzleloaders. (7-1-93)

a. With a muzzleloading rifle or musket which is less than forty-five (.45) caliber for deer, antelope, or mountain lion, or which is less than fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (7-1-93)

b. With any electronic device attached to, or incorporated in, the muzzleloader. (3-30-01)

c. During a *Muzzleloader Only* season, with any firearm, muzzleloading pistol or other implement other than a muzzleloading rifle or musket which: (7-1-93)

i. Is at least forty-five (.45) caliber for deer, antelope or mountain lion or at least fifty (.50) caliber for elk, moose, bighorn sheep, mountain goat or black bear. (7-1-93)

ii. Is capable of being loaded only from the muzzle. (7-1-93)

iii. Is equipped only with open or peep sights. (7-1-93)

iv. Is loaded only with loose black powder or, loose Pyrodex or other loose synthetic black powder. Pelletized powders are prohibited. (3-20-97)()

v. Is equipped with no more than two (2) barrels. (7-1-93)

vi. Is loaded only with a projectile ~~of at least four hundred twenty-eight (.428) caliber~~ with a diameter within one hundredth (.01) of an inch of the bore diameter. Sabots are prohibited. (3-20-97)()

vii. Is equipped only with flint, musket cap, or percussion cap. 209 primers are prohibited. (4-6-05)()

viii. Is equipped with an exposed pivoting hammer and has an exposed ignition system. ()

~~d. During a TRADITIONAL MUZZLELOADER ONLY season, with any firearm other than a muzzleloader rifle or musket with an exposed hammer that pivots:~~ (3-15-02)

~~i. Is loaded only with loose black powder or Pyrodex.~~ (3-15-02)

~~ix.~~ Is loaded only with a patched round ball or conical non-jacketed projectile comprised wholly of lead or lead alloy. Sabots are not allowed. (4-11-06)

04. Short-Range Weapon. During Short-Range Weapon ONLY seasons ONLY the following weapons may be used: (7-1-99)

a. With any shotgun using any slug or double-aught (#00) or larger buckshot. (7-1-99)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION **Taking of Big Game Animals in the State of Idaho**

Docket No. 13-0108-0701
PENDING RULE

b. With any muzzleloader that is at least forty-five (0.45) caliber for deer, antelope, or mountain lion or at least fifty (0.50) caliber for elk, moose, bighorn sheep, mountain goat, or black bear. (7-1-99)

c. With any bow having a peak draw weight of not less than forty (40) pounds up to or at a draw of twenty-eight (28) inches, or any crossbow having a peak draw weight of not less than one hundred fifty (150) pounds. (7-1-99)

05. Other. (7-1-93)

a. With electronic calls EXCEPT for the hunting of mountain lions in Units 41, 42 and that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486. (3-15-02)

b. With any bait including grain, salt in any form (liquid or solid), or any other substance (not to include liquid scent) to constitute an attraction or enticement, with the exception of applicable rules for the black bear baiting permit. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.17, "Rules Governing the Use of Bait for Taking Big Game Animals." (3-30-01)

c. With dogs, EXCEPT for mountain lion or black bear. See Rules of the Idaho Fish and Game Commission, IDAPA 13.01.15, "Rules Governing the Use of Dogs." (7-1-93)

d. With any net, snare, trap, chemical, deadfall or device other than legal firearm, archery or muzzleloader equipment. (7-1-93)

e. Within an enclosure designed to prevent ingress or egress of big game animals, including fenced facilities defined as Domestic Cervidae Farms under Section 25-3501, Idaho Code, unless authorized by the director. This rule shall not apply to domestic cervidae which are lawfully privately owned elk, fallow deer, or reindeer. (4-6-05)

(BREAK IN CONTINUITY OF SECTIONS)

412. MOTORIZED VEHICLE USE RESTRICTION UNITS.

The motorized vehicle use restriction applies to areas and hunts in units 29, 30, 30A, 32, 32A, 36A, 37, 37A, 45, 47, 48, 49, 50, 51, 52, 53, 56, 57, 58, 59, 59A, 66, 69, 70, 72 (late season), 73, 75, 77, and 78. The specific hunts and areas with a motorized vehicle use restriction are identified in the Commission's Big Game Season Proclamation, which is published in a brochure available at department offices and license vendors. (~~3-30-07~~)(____)

(BREAK IN CONTINUITY OF SECTIONS)

700. CONTROLLED HUNT AREA DESCRIPTIONS -- DEER.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.

()

- ~~01. Hunt Area 1. All of Unit 1. (3-30-07)~~
- ~~02. Hunt Area 8X. All of Unit 8. (3-30-07)~~
- ~~03. Hunt Area 8AX. That portion of Unit 8A within one mile of private land. (For purposes of this hunt, "private land" does not include corporate timberlands). (3-30-07)~~
- ~~04. Hunt Area 10AX. That portion of Unit 10A within one (1) mile of private land. (For purposes of this hunt, "private land" does not include corporate timberlands). (3-30-07)~~
- ~~05. Hunt Area 11. All of Unit 11. (10-26-94)~~
- ~~06. Hunt Areas 11A. All of Unit 11A. (3-30-07)~~
- ~~07. Hunt Area 11AX. All of Unit 11A and that portion of Unit 14 north and west of U.S. Highway 95 and Whitebird Creek. (3-30-07)~~
- ~~08. Hunt Area 13. All of Unit 13. (7-1-99)~~
- ~~09. Hunt Area 14. All of Unit 14. (7-1-99)~~
- ~~10. Hunt Area 15X. The western portions of Units 15 and 16 outside of and up to one mile inside the National Forest System Boundary. The National Forest System Boundary is a legislatively set boundary—it is not necessarily the boundary of Forest Service property. Please refer to a US Forest Service map for the location of this boundary. (3-30-07)~~
- ~~11. Hunt Area 18. All of Unit 18. (3-30-07)~~
- ~~12. Hunt Area 19A. All of Unit 19A. (3-15-02)~~
- ~~13. Hunt Area 20A. All of Unit 20A. (4-5-00)~~
- ~~14. Hunt Area 21. All of Units 21, 28, 36, 36A, and 36B. (3-30-07)~~
- ~~15. Hunt Area 21-1. Private land within Units 21, 21A, 28, 29, 30, 30A, 36A, 36B, 37, and 37A. (3-30-07)~~
- ~~16. Hunt Area 22. All of Unit 22. (3-30-01)~~
- ~~17. Hunt Area 23. All of Unit 23. (10-26-94)~~
- ~~18. Hunt Area 23X. That area of Unit 23 outside the National Forest System Boundary and within the Little Salmon River drainage, upstream from and including the Boulder Creek drainage on the west side of the Little Salmon River; and upstream from but excluding the~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION

Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701

PENDING RULE

Hazard Creek drainage on the east side of the Little Salmon River.	(3-30-07)
19. Hunt Area 25. All of Unit 25.	(7-1-93)
20. Hunt Area 26. All of unit 26.	(4-5-00)
21. Hunt Area 27. All of Unit 27.	(4-5-00)
22. Hunt Area 31. All of Unit 31.	(3-30-01)
23. Hunt Area 32. All of Unit 32.	(3-30-01)
24. Hunt Area 32A. All of Unit 32A.	(3-30-01)
25. Hunt Areas 33. All of Units 33 and 35, and that portion of Unit 34 south and west of the Landmark Stanley Road.	(3-15-02)
26. Hunt Area 37. All of Units 37 and 37A.	(3-30-07)
27. Hunt Area 39-1. All of Unit 39.	(3-15-02)
28. Hunt Area 39-2. All of Unit 39 EXCEPT that portion of Unit 39 south and east of the Black's Creek Road and south of the South Fork of the Boise River.	(3-30-07)
29. Hunt Area 39-3. That portion of Unit 39 within the following boundary: Beginning at a point four hundred (400) yards north of State Highway 21 at the Ada County Line, south and west on a line four hundred (400) yards north of State Highway 21 to Warm Springs Avenue, and west on a line four hundred (400) yards north of Warm Springs Avenue to the Highlands-Table Rock powerline, north and west on the Highlands-Table Rock powerline to State Highway 55, north on Highway 55 to the Ada County Line, and southeast on the Ada County Line to the point of beginning.	(4-5-00)
30. Hunt Areas 40-1. All of Unit 40.	(3-30-07)
31. Hunt Area 40-2. All of Units 40, 41, and 42.	(4-5-00)
32. Hunt Area 41. All of Unit 41.	(3-30-01)
33. Hunt Areas 42-1. All of Unit 42.	(3-30-07)
34. Hunt Area 43. All of Unit 43.	(3-30-07)
35. Hunt Area 44-1. All of Unit 44.	(3-30-01)
36. Hunt Area 44-2. All of Units 44, 45, and 52.	(3-30-07)
37. Hunt Area 45-1. That portion of Unit 45 west of the Bliss-Hill City Road.	(3-30-07)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

38. ~~Hunt Area 45-2.~~ All of Unit 45. (3-30-07)
39. ~~Hunt Area 45-3.~~ That portion of Unit 45 east of the Bliss Hill City Road. (3-30-07)
40. ~~Hunt Area 46.~~ All of Units 46, 47, 54, 55, and 57. (3-15-02)
41. ~~Hunt Area 47-1.~~ All of Unit 47. (7-1-98)
42. ~~Hunt Area 47-2.~~ All of Units 46 and 47. (10-26-94)
43. ~~Hunt Area 48.~~ All of Unit 48. (10-26-94)
44. ~~Hunt Area 49.~~ All of Unit 49. (10-26-94)
45. ~~Hunt Area 50-1.~~ That portion of Unit 50 west of U.S. Highway 93. (3-30-01)
46. ~~Hunt Area 50-2.~~ All of Unit 50. (7-1-98)
47. ~~Hunt Area 51.~~ All of Unit 51 and that portion of Unit 50 east of U.S. Highway 93. (3-30-01)
48. ~~Hunt Area 52.~~ All of Unit 52. (3-30-01)
49. ~~Hunt Area 52A.~~ All of Unit 52A. (Caution: See Craters of the Moon closure.) (3-30-07)
50. ~~Hunt Area 54.~~ All of Unit 54. (3-30-01)
51. ~~Hunt Area 55.~~ All of Unit 55. Most of the City of Rocks National Reserve is open to hunting. Information about hunting within the Reserve is available to permittees at IDFG offices and at the National Park Service office in Almo. (3-30-07)
52. ~~Hunt Area 56.~~ All of Unit 56. (10-26-94)
53. ~~Hunt Area 57.~~ All of Unit 57. (3-30-01)
54. ~~Hunt Area 58.~~ All of Units 58, 59, and 59A. (3-15-02)
55. ~~Hunt Area 60-1.~~ All of Units 60, 62A, and that portion of Unit 60A beyond one (1) mile north and west of the North (Henrys) Fork of the Snake River. (3-30-07)
56. ~~Hunt Area 60-2.~~ All of Units 60, 61, and 62A. (3-30-07)
57. ~~Hunt Area 60X.~~ All of Units 60, 60A, 62, 63, 63A, 64, 65, 66, 67, and 69. (3-30-07)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION

Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701

PENDING RULE

- ~~58. Hunt Area 61. All of Unit 61. (3-20-97)~~
- ~~59. Hunt Area 62. All of Unit 62. (3-15-02)~~
- ~~60. Hunt Area 64. All of Unit 64 and that portion of Unit 67 north and east of State Highway 26. (7-1-99)~~
- ~~61. Hunt Area 66. All of Unit 66. (3-30-01)~~
- ~~62. Hunt Area 67. That portion of Unit 67 north and west of State Highway 31. (3-30-07)~~
- ~~63. Hunt Area 68A. All of Unit 68A. (3-20-97)~~
- ~~64. Hunt Area 69. All of Unit 69. (3-30-07)~~
- ~~65. Hunt Area 70. All of Units 56, 70, 73, 73A, and 78. (3-30-07)~~
- ~~66. Hunt Area 75. All of Unit 75, 77, and 78. EXCEPT the private land in Unit 75 east and north of the Bear River is CLOSED. (3-15-02)~~

701. CONTROLLED HUNT AREA DESCRIPTIONS - ELK.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.

()

- ~~01. Hunt Area 1. That portion of Unit 1 within the Priest River Drainage and within the Pend Oreille River drainage downstream from Priest River. (3-30-07)~~
- ~~02. Hunt Area 4. All of Units 4 and 7. (3-20-97)~~
- ~~03. Hunt Area 8-1. That portion of Units 8 and 8A north of the following line: Beginning at the western boundary of Unit 8 at its junction with State Highway 8, then east on Highway 8 to State Highway 9, then northwest on Highway 9 to State Highway 6, then north on Highway 6 to the Unit 8A boundary. (3-30-01)~~
- ~~04. Hunt Area 8-2. That portion of Units 8 and 8A south of the following line: Beginning at the western boundary of Unit 8 at its junction with State Highway 8, then east on Highway 8 to Forest Service Road 1963 at Helmer, then south and east on Forest Service Road 1963 to Long Meadow Creek, then southeast along Long Meadow Creek to Dworshak Reservoir, then east along the shoreline of Dworshak Reservoir to the Unit 8A boundary at Dent Bridge. (3-15-02)~~
- ~~05. Hunt Area 10A. That portion of Unit 10A west of the Clearwater National Forest boundary, south of Forest Service Road 250, south of State Highway 11 from Pierce to Weippe, and Jim Ford Creek from Weippe to its junction with the Clearwater River. (3-30-07)~~
- ~~06. Hunt Area 11-1. All of Unit 11. (3-30-07)~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

~~07. **Hunt Area 11-2.** That portion of Unit 11 within one (1) mile of cultivated fields and north and east of the follow boundary: Beginning at the Unit 11/13 boundary at the Nez Perce County/Lewis County line, then north on the Nez Perce County/Lewis County line to Soldiers Meadow Road, then west on Soldiers Meadow Road to ZaZa Road, then north on ZaZa Road to Waha Road, then north on Waha Road to Redbird Road, then west on Redbird Road to the boundary of the Craig Mountain WMA, then north and east along the Craig Mountain WMA boundary to the Snake River, then north along the Snake River to the Unit 8/11 boundary.~~

~~(3-30-07)~~

~~08. **Hunt Area 11A.** All of Unit 11A.~~

~~(7-1-99)~~

~~09. **Hunt Area 13.** All of Unit 13.~~

~~(3-30-01)~~

~~10. **Hunt Area 14.** That portion of Unit 14 north of and west of the following boundary: Beginning on the Unit 14 western boundary at John Day Creek, then east along the main fork of John Day Creek to the National Forest boundary, then north along the National Forest boundary to Forest Service Road 2025 (Skookumchuck Road), then east along Forest Service Road 2025 to Forest Service Road 221, then north along Forest Service Road 221 to the Unit 14 eastern boundary.~~

~~(3-30-07)~~

~~11. **Hunt Area 18.** All of Unit 18.~~

~~(3-30-01)~~

~~12. **Hunt Area 19A.** All of Unit 19A.~~

~~(3-30-01)~~

~~13. **Hunt Area 21A.** All of Unit 21A.~~

~~(3-30-07)~~

~~14. **Hunt Area 22-1.** That portion of Unit 22 described as follows: Beginning at the junction of U.S. 95 and the West Fork Weiser River Road (Forest Service Road 127), then north on Forest Service Road 127 to Grouse Creek Road (Forest Service Road 123), then northwest on Forest Service Road 123 to the watershed divide between Lick Creek and Lost Creek drainages, then north on the divide between Lick Creek and Lost Creek drainages to Lick Creek Lookout, then west on Unit 22 boundary to the Snake River, then south on the Snake River to State Highway 71, then southeast on State Highway 71 to Cambridge, then north on U.S. 95 to the point of beginning.~~

~~(3-30-01)~~

~~15. **Hunt Area 22-2.** That portion of Unit 22 as follows: Beginning at the junction of U.S. 95 and the West Fork Weiser River Road (Forest Service Road 127), then north on Forest Service Road 127 to Grouse Creek Road (Forest Service Road 123), then northwest on Forest Service Road 123 to the watershed divide between Lick Creek and Lost Creek drainages, then north on the divide between Lick Creek and Lost Creek drainages to Lick Creek Lookout, then east along Unit 22 boundary to U.S. 95 to the point of beginning.~~

~~(5-15-95)~~

~~16. **Hunt Area 22-3.** All of Unit 22.~~

~~(3-30-01)~~

~~17. **Hunt Area 23-1.** All of Unit 23.~~

~~(10-26-94)~~

~~18. **Hunt Area 23-2.** That portion of Unit 23 within the Little Salmon River drainage,~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

~~upstream from and including the Boulder Creek drainage on the west side of the Little Salmon River, and upstream from but excluding the Hazard Creek drainage on the east side of the Little Salmon River.~~ (3-30-07)

~~19. **Hunt Area 23-3.** That portion of Unit 23 west of U.S. 95 and north of, and excluding, the Boulder Creek drainage.~~ (3-30-01)

~~20. **Hunt Area 23-4.** That portion of Unit 23 which drains into the main Salmon River upstream from its confluence with the Little Salmon River to the French Creek-Burgdorf Road.~~ (3-30-01)

~~21. **Hunt Area 24-1.** That portion of Unit 24 within the following boundary: Beginning at the junction of State Highway 55 and the Warm Lake Road, then east along Warm Lake Road to the Unit 24/25 boundary, then north along the Unit 24/25/19A boundary to the intersection of the Unit 24/19A/23 boundaries, then south along the Unit 24/23/32A boundary to Forest Service Road 186 at No Business Saddle, then southeast on Forest Service Road 186 to West Mountain Road, then south on West Mountain Road to Tamarack Falls Road, then east on Tamarack Falls Road to Norwood Road, then north on Norwood Road to West Roseberry Road, then east on West Roseberry Road to State Highway 55, then south on State Highway 55 to the point of beginning. EXCEPT Short Range Weapons ONLY in that portion within the following boundary: Beginning in McCall at the junction of State Highway 55 and Boydstun Street, then south on Boydstun Street to West Valley Road, then west and south along West Valley Road and West Mountain Road to Tamarack Falls Road, then east on Tamarack Falls Road to Norwood Road, then north on Norwood Road to West Roseberry Road, then east on West Roseberry Road to State Highway 55, then south on State Highway 55 to Farm-to-Market Road, then north on Farm-to-Market Road to Elo Road, then west on Elo Road to State Highway 55, then north on State Highway 55 to the point of beginning.~~ (3-30-07)

~~22. **Hunt Area 24-2.** That portion of Unit 24 within the following boundary: Beginning north of Cascade at the junction of State Highway 55 and Warm Lake Road, then north on Highway 55 to West Roseberry Road, then west on West Roseberry Road to Norwood Road, then south on Norwood Road to Tamarack Falls Road, then west on Tamarack Road to West Mountain Road, then north on West Mountain Road to Forest Service Road 186, then northwest on Forest Service Road 186 to No Business Saddle, then south along the Unit 24/32A unit boundary to the intersection of the Unit 24/32A/33 boundaries at Smith's Ferry, then north along the Unit 24/33/25 boundary to Warm Lake Road, then west on Warm Lake Road to the point of beginning. EXCEPT Short Range Weapons Only within the following boundary: Beginning in Donnelly at the junction of State Highway 55 and West Roseberry Road, then west on West Roseberry Road to Norwood Road, then south on Norwood Road to Tamarack Falls Road, then west on Tamarack Falls Road to West Mountain Road, then south on West Mountain Road to Cabarton Road, then north on Cabarton Road to State Highway 55, then north on State Highway 55 to the point of beginning.~~ (3-30-07)

~~23. **Hunt Area 24-3.** All of Unit 24.~~ (4-5-00)

~~24. **Hunt Area 25.** All of Unit 25.~~ (3-30-01)

~~25. **Hunt Area 28.** All of Unit 28.~~ (3-30-07)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

- ~~26. Hunt Area 29-1. All of Unit 29. (7-1-99)~~
- ~~27. Hunt Area 29-2. All of Units 29 and 37A. (7-1-99)~~
- ~~28. Hunt Area 30. All of Unit 30. (3-30-07)~~
- ~~29. Hunt Area 30-1. All of Units 30, 30A, 58, 59, and 59A. (7-1-99)~~
- ~~30. Hunt Area 30A. All of Unit 30A. (3-30-01)~~
- ~~31. Hunt Area 31-1. That portion of Unit 31 that drains into the Snake River, upstream from and including the Grouse Creek Drainage to the U.S. Highway 95 bridge in Weiser; and that portion of Unit 31 that drains into Monroe Creek from it's mouth upstream to and including the Sheep Creek drainage. (3-30-07)~~
- ~~32. Hunt Area 31-2. All of Unit 31. (3-30-07)~~
- ~~33. Hunt Area 32-1. That portion of Unit 32 east of the following boundary: Beginning at the Unit 32/38 boundary at Emmett, then north on Highway 52 to the Van Dussen Road, then north on Four Mile Road to the Unit 32/32A boundary. (3-30-07)~~
- ~~34. Hunt Area 32-2. All of Unit 32 south and east of the following boundary: Beginning at the Unit 32 boundary at Gardena, then west on the Brownlee Road to the Sweet Highway, then south to Highway 52, then south and west on Highway 52 to the Unit 32/38 boundary. (3-30-07)~~
- ~~35. Hunt Area 32A. All of Unit 32A. (3-30-01)~~
- ~~36. Hunt Area 33-1. Beginning at the Unit 33 boundary on the Alder Creek Road (Forest Road 615) then west and north along the Unit 33/39 boundary to Banks, then north on the Unit 32/33 boundary to Smith's Ferry, then south on Forest Road 689 to Murray Saddle, then north along the watershed divide between the North Fork and the Middle Fork of the Payette River to Forest Road 696 (West Fork of Scriver Creek), then east on Forest Road 696 to Forest Road 693 (Scriver Creek), then south and east on Forest Road 693 to Forest Road 698 (Middle Fork Road), then south on Forest Road 698 to the Banks-Lowman Highway (Highway 17), then east on the Banks-Lowman Highway to Forest Road 615 (Alder Creek Road), then south on Forest Road 615 to the unit boundary, the point of beginning. (3-30-07)~~
- ~~37. Hunt Area 33-2. All of Units 33 and 35 and that portion of Unit 34 south and west of the Landmark Stanley Road. (3-30-01)~~
- ~~38. Hunt Area 36-1. That portion of Unit 36 west of State Highway 75 and south of and including Redfish Lake Creek drainage. (3-30-07)~~
- ~~39. Hunt Area 36-2. That portion of Unit 36 not included in Hunt Area 36-1. (3-30-07)~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

40. ~~Hunt Area 36A.~~ All of Unit 36A. (3-30-07)
41. ~~Hunt Area 36A-1.~~ That portion of Unit 36A west of the East Fork of the Salmon River and that portion east of the East Fork of the Salmon River upstream from and including the West Pass Creek drainage. (3-30-01)
42. ~~Hunt Area 36A-2.~~ That portion of Unit 36A east of the East Fork of the Salmon River downstream from but EXCLUDING the West Pass Creek drainage; and that portion of Unit 50 north of Trail Creek Road and west of U.S. 93, and that portion of Unit 50 north of the Doublespring Pass Road east of U.S. Highway 93. (3-30-07)
43. ~~Hunt Area 36B.~~ All of Unit 36B. (4-5-00)
44. ~~Hunt Area 37.~~ All of Unit 37. (3-30-01)
45. ~~Hunt Areas 37A.~~ All of Unit 37A. (3-30-07)
46. ~~Hunt Area 39-1.~~ That portion of Unit 39 south and east of State Highway 21. (3-30-07)
47. ~~Hunt Area 39-2.~~ That portion of Unit 39 north and west of State Highway 21. (3-30-07)
48. ~~Hunt Area 39-3.~~ That portion of Unit 39 north and west of the following boundary: Beginning in Boise, north on the Bogus Basin Road to Bogus Basin, then north on Forest Service Road 374 (Boise Ridge Road) to the Unit 39 boundary at Hawley Mountain. (3-30-07)
49. ~~Hunt Area 40.~~ All of Units 40, and 42. (3-30-07)
50. ~~Hunt Area 43.~~ All of Unit 43. (3-30-01)
51. ~~Hunt Area 44-1.~~ All of Unit 44. (3-30-07)
52. ~~Hunt Area 44-2.~~ All of Units 44, 45, and 52. (3-30-07)
53. ~~Hunt Area 45.~~ All of Units 45 and 52. (3-30-01)
54. ~~Hunt Area 48-1.~~ All of Unit 48. (3-30-01)
55. ~~Hunt Area 48-2.~~ That portion of Unit 48 north Trail Creek and the Ketchum Warm Springs Creek Dollarhide Summit Road. (3-30-01)
56. ~~Hunt Area 48-3.~~ That portion of Unit 48 south of the Ketchum Warm Springs Creek Dollarhide Summit Road. (3-30-01)
57. ~~Hunt Area 48-4.~~ That portion of Unit 48 south and east of the following boundary: Beginning at the junction of the Deer Creek Road and State Highway 75, then west on the Deer

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

~~Creek Road (Forest Service Road 097) to the Deer Creek Trail (Forest Service Trail 168), then west on the Deer Creek Trail to the Curran Creek Trail (Forest Service Trail 160), then southwest on the Curran Creek Trail to the Unit 44/48 boundary, and that portion of Unit 44 east of Willow Creek and south and east of Little Beaver Creek and Princess Mine Road.~~ (3-30-07)

58. ~~Hunt Area 49.~~ All of Unit 49. (3-30-07)

59. ~~Hunt Area 50-1.~~ That portion of Unit 50 south of the Doublespring Pass Road east of U.S. Highway 93, and that portion south of the Trail Creek Road west of U.S. Highway 93. (3-30-07)

60. ~~Hunt Area 50-2.~~ That portion of Unit 50 south of the Doublespring Pass Road east of U.S. Highway 93, and that portion south of the Trail Creek Road west of U.S. Highway 93 EXCLUDING the East Fork of the Big Lost River drainages and EXCLUDING south of the Antelope/Fish Creek Road. (3-30-07)

61. ~~Hunt Area 50-3.~~ That portion of Unit 50 south of the Antelope/Fish Creek Road. (3-30-07)

62. ~~Hunt Area 51.~~ All of Unit 51. (3-30-07)

63. ~~Hunt Area 52A.~~ All of Units 52A and 68. (Caution: See Craters of the Moon closure.) (3-30-07)

64. ~~Hunt Area 54-1.~~ All of Units 46, 47, 54, 55, and 57 and that portion of Unit 41 east of the West Fork Bruneau River. (3-30-07)

65. ~~Hunt Area 54-2.~~ Private land within Units 46, 47, 54, 55, and 57 and private land within that portion of Unit 41 east of the West Fork Bruneau River. (3-30-07)

66. ~~Hunt Area 56.~~ All of Unit 56. (3-30-07)

67. ~~Hunt Area 58-1.~~ All of Unit 58, 59, and 59A. (7-1-99)

68. ~~Hunt Area 58-2.~~ All of Unit 58. (7-1-99)

69. ~~Hunt Area 59.~~ All of Units 59 and 59A. (7-1-99)

70. ~~Hunt Area 60.~~ All of Units 60, 60A, 61, and 62A. (3-30-07)

71. ~~Hunt Area 60-1.~~ All of Units 60, 61, and 62A. (3-30-07)

72. ~~Hunt Area 60-2.~~ All of Units 60 and 60A. (3-30-07)

73. ~~Hunt Area 61.~~ All of Unit 61. (3-30-01)

74. ~~Hunt Area 62.~~ That portion of Unit 62 within the National Forest boundary and that portion of Unit 65 east of State Highway 33. (3-30-07)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

75. ~~Hunt Area 62A.~~ All of Unit 62A. (3-30-07)
76. ~~Hunt Area 66X.~~ All of Units 66 and 69. (3-30-07)
77. ~~Hunt Area 66A.~~ All of Units 66A and 76. (3-30-01)
78. ~~Hunt Area 66A-1.~~ All of Unit 66A. (3-30-07)
79. ~~Hunt Area 70.~~ All of Units 70, 71, 72, 73, 73A, and 74. (3-30-01)
80. ~~Hunt Area 73X.~~ That portion of Unit 73 east of Interstate Highway 15, south of Two-mile Canyon Skyline Dry Canyon Road (Forest Service Road 053), and south and east of State Highway 36 to the Utah border. (3-30-07)
81. ~~Hunt Area 74X.~~ Those portions of Units 74 and 75 within the following: Beginning at the junction of Highway 34 and Central Road, west on Central Road to Mountain Road, south on Mountain Road to Gentile Road, south on Gentile Road to River Road, south on River Road to Thatcher Road, east on Thatcher Road to Highway 34, south on Highway 34 to Main Canyon Road (USFS Road 440) to the USFS boundary, north along the USFS boundary to King Canyon Road (USFS Road 183), west on King Canyon Road to the Harwood Road, south on Harwood Road to Burton Road, west on Burton Road to Highway 34 to the point of beginning. (3-30-07)
82. ~~Hunt Area 75.~~ All of Units 75, 77, and 78. (3-30-01)
83. ~~Hunt Area 76-1.~~ All of Unit 76. (3-30-07)
84. ~~Hunt Area 66A.~~ That portion of unit 66A within the Miller and Newswander Creek drainages, the Jackknife Creek drainage east of the mouth of Squaw Creek, and east of the Cabin Creek Haderlie Ridge Trail (Forest Service Trail 619), and the following portions of Unit 76: the drainage of Salt River east and south of the South Fork of Tincup Creek, and the drainage of the Thomas Fork of the Bear River north of State Highway 89 to the Idaho-Wyoming border. (3-30-07)
85. ~~Hunt Area 76-3X.~~ Private lands and adjacent National Forest lands within one-half (1/2) mile of the eastern boundary of National Forest within the following: Unit 66A south of Miller Creek, and Unit 76 north and east of the junction of Sage Creek and Crow Creek Road to the Idaho-Wyoming border. (3-30-07)
86. ~~Hunt Area 76-4X.~~ That portion of Unit 76 east of U.S. Highway 30 and south of the Georgetown Canyon Road and west of the Caribou National Forest boundary, and the area south of U.S. Highway 89 and north of U.S. Highway 30 between Montpelier. (3-30-07)
87. ~~Hunt Area 77X.~~ That portion of Unit 77 east of U.S. Highway 91, south of the Cub Creek Road, and west of the Cache National Forest boundary to the Utah border. (3-30-07)

702. CONTROLLED HUNT AREA DESCRIPTIONS -- MOOSE.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.

()

~~01. **Hunt Area 1-1.** That portion of Unit 1 within the Priest River drainage, and those portions of the Pend Oreille and Salmon River drainages downstream from the Priest River drainage.~~ (3-15-02)

~~02. **Hunt Area 1-2.** That portion of Unit 1 within the following boundaries: beginning on U.S. Highway 95 bridge across the Pend Oreille River at Sandpoint, then northward along Route 95 to the Kootenai River at Bonner's Ferry, then northwesterly along the Kootenai River to the U.S. border, then west along the U.S. border to the Priest River-Kootenai River divide, then south along the Priest River-Pack River divide to Flat Top Mountain, then south along the divide separating the Priest River drainage and the Pend Oreille River drainage to Priest River, then east along the Pend Oreille River to the point of beginning. EXCEPT MYRTLE CREEK GAME PRESERVE—CLOSED.~~ (3-15-02)

~~03. **Hunt Area 1-3.** That portion of Unit 1 north and east of the Kootenai River.~~ (3-15-02)

~~04. **Hunt Area 1-4.** That portion of Unit 1 south of the Kootenai River and east of U.S. Highway 95. EXCEPT THE DAVID THOMPSON GAME PRESERVE—CLOSED.~~ (3-15-02)

~~05. **Hunt Area 2.** All of Unit 2.~~ (4-3-95)

~~06. **Hunt Area 3.** All of Unit 3.~~ (4-5-00)

~~07. **Hunt Area 4.** All of Units 4 and 4A.~~ (4-5-00)

~~08. **Hunt Area 6.** All of Units 5 and 6.~~ (7-1-98)

~~09. **Hunt Area 7.** All of Unit 7.~~ (7-1-98)

~~10. **Hunt Area 8.** All of Unit 8.~~ (3-15-02)

~~11. **Hunt Area 8A.** All of Unit 8A.~~ (3-15-02)

~~12. **Hunt Area 9.** All of Unit 9.~~ (4-3-95)

~~13. **Hunt Area 10-1.** That portion of Unit 10 within the Cayuse Creek drainage.~~ (4-3-95)

~~14. **Hunt Area 10-2.** That portion of Unit 10 on the north side of the Kelly Creek drainage upstream from, but excluding, the Moose Creek drainage, and that portion on the south side of the Kelly Creek drainage upstream from, but excluding, the Cayuse Creek drainage.~~ (4-3-95)

~~15. **Hunt Area 10-3.** That portion of Unit 10 on the north side of the Kelly Creek~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

~~drainage upstream from its mouth to and including the Moose Creek drainage, and the North Fork of the Clearwater River drainage upstream from the mouth of Kelly Creek.~~ (4-3-95)

~~16. **Hunt Area 10-4.** That portion of Unit 10 within the Fourth of July Creek drainage, that portion on the south side of the North Fork of the Clearwater River from the mouth of Fourth of July Creek upstream to the mouth of Kelly Creek, and the south side of the Kelly Creek drainage from its mouth upstream to, but excluding, the Cayuse Creek drainage.~~ (4-3-95)

~~17. **Hunt Area 10-5.** That portion of Unit 10 within the Weitas Creek drainage (a tributary of the upper North Fork of the Clearwater River), and the drainages on the southwest side of the North Fork of the Clearwater River from the Weitas Creek drainage to, but excluding, the Fourth of July Creek drainage.~~ (4-3-95)

~~18. **Hunt Area 10-6.** That portion of Unit 10 on the north side of the North Fork of the Clearwater River drainage downstream from the mouth of Kelly Creek.~~ (3-15-02)

~~19. **Hunt Area 10A-1.** That portion of Unit 10A within the following boundary: Beginning at the junction of the Unit 10A boundary with Forest Service Road 250 along the North Fork of the Clearwater River, then west along Forest Service Road 250 to Forest Service Road 669, then west and south along Forest Service Road 669 to Highway 11 at Pierce, then south on Highway 11 to Forest Service Road 100, then south on Forest Service Road 100 to the Clearwater National Forest boundary, then south along the Clearwater National Forest boundary to the Unit 10A boundary, then north along the Unit 10A boundary to the point of beginning.~~ (3-15-02)

~~20. **Hunt Area 10A-2.** That portion of Unit 10A within the following boundary: Beginning at the junction of Unit 10A boundary with Forest Service Road 247, then south on Forest Service Road 247 to Forest Service Road 251, then south on Forest Service Road 251 to Forest Service Road 246, then southwest on Forest Service Road 246 to State Highway 11 at Headquarters, then south on Highway 11 to Forest Service Road 669 at Pierce, then northeast on Forest Service Road 669 to Forest Service Road 250, then northeast on Forest Service Road 250, to the Unit 10A boundary, then north and east along the Unit 10A boundary to the point of beginning.~~ (4-3-95)

~~21. **Hunt Area 10A-3.** That portion of Unit 10A within the following boundary: Beginning at the Grandad Bridge on the Unit 10A boundary, then south and east along the Silver Creek-Casey Creek Road to Forest Service Road 247, then south on Forest Service Road 247 to Forest Service Road 246 at Headquarters, then northeast on Forest Service Road 246 to Forest Service Road 251, then north on Forest Service Road 251 to Forest Service Road 247, then north on Forest Service Road 247 to the Unit 10A boundary at the North Fork of the Clearwater River, then west on the Unit 10A boundary to the point of beginning.~~ (7-1-98)

~~22. **Hunt Area 10A-4.** That portion of Unit 10A north of Forest Service Road 1705 from Elk River to Grandad Bridge and north and west of Dworshak Reservoir and the Little North Fork of the Clearwater River.~~ (4-3-95)

~~23. **Hunt Area 10A-5.** That portion of Unit 10A south of Forest Road 1705 from Elk River to Grandad Bridge and north and west of Dworshak Reservoir.~~ (4-5-00)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

- ~~24. **Hunt Area 12-1.** That portion of Unit 12 north of the Lochsa River from and including the Lost Creek drainage upstream to, but excluding the Crooked Fork drainage. (7-1-98)~~
- ~~25. **Hunt Area 12-2.** That portion of Unit 12 within the Crooked Fork Creek drainage and north of White Sand Creek upstream to and including the Storm Creek drainage. (3-15-02)~~
- ~~26. **Hunt Area 12-3.** That portion of Unit 12 south of the Lochsa River from and including the Old Man Creek drainage upstream to and including the Mocus Creek drainage. (3-15-02)~~
- ~~27. **Hunt Area 12-4.** That portion of Unit 12 south of the Lochsa River from, but excluding, the Mocus Creek drainage, upstream to and including the Cliff Creek drainage. (3-15-02)~~
- ~~28. **Hunt Area 12-5.** That portion of Unit 12 within the Walton Creek drainage, that portion on the south side of White Sand Creek upstream to the mouth of Storm Creek, and all of White Sand Creek drainage upstream from, but excluding, the Storm Creek drainage. (3-15-02)~~
- ~~29. **Hunt Area 12-6.** That portion of Unit 12 north of the Middle Fork of the Clearwater River from the Smith Creek Road (Forest Service Road 101) upstream to the mouth of the Lochsa River; that portion on the north side of the Lochsa River upstream to, but excluding, the Lost Creek drainage, and that portion on the south side of the Lochsa River from its mouth upstream to, but excluding, the Old Man Creek drainage. (3-15-02)~~
- ~~30. **Hunt Area 14-1.** That portion of Unit 14 north and west of the following boundary: Beginning on the Unit 14 west boundary on the Slate Creek Road (Forest Service Road 354), then east on the Slate Creek Road to Forest Service Road 221, then north on Forest Service Road 221 to the Unit 14 east boundary. (4-5-00)~~
- ~~31. **Hunt Area 14-2.** That portion of Unit 14 south of the following: Beginning on the Unit 14 west boundary on the Slate Creek Road (Forest Service Road 354), then east on the Slate Creek Road to Forest Service Road 221, then north on Forest Service Road 221 to the Unit 14 east boundary. (4-5-00)~~
- ~~32. **Hunt Area 15-1.** That portion of Unit 15 north of the South Fork of the Clearwater River from and including the American River drainage downstream to and including the Newsome Creek drainage. (3-15-02)~~
- ~~33. **Hunt Area 15-2.** That portion of Unit 15 South of the South Fork of the Clearwater River downstream from and including the Crooked River drainage upstream to and including the Red River drainage. (3-15-02)~~
- ~~34. **Hunt Area 15-3.** That portion of Unit 15 on the south and west sides of the South Fork of the Clearwater River downstream from, but excluding, the Crooked River drainage. (4-3-95)~~
- ~~35. **Hunt Area 15-4.** That portion of Unit 15 north and east of the South Fork of the~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

Clearwater River from and including the Sally Ann Creek drainage upstream to and including the Leggett Creek drainage. (3-15-02)

36. ~~Hunt Area 16-1.~~ *That portion of Unit 16 north and west of the Hamby Creek Road (Forest Service Road 651), and that portion south and west of the Selway River from its mouth upstream to the Hamby Creek Road.* (4-3-95)

37. ~~Hunt Area 16-2.~~ *That portion of Unit 16 south and east of Hamby Creek Road (Forest Service Road 651), and that portion north and east of the Selway River from its mouth upstream to Fog Mountain Road (Forest Service Road 319).* (4-3-95)

38. ~~Hunt Area 16A-1.~~ *That portion of Unit 16A north and west of the following boundary: Beginning at Anderson Butte, then east along the Drive Ridge Trail (Forest Service Trail 809) to the Meadow Creek Trail (Forest Service Trail 726), then east along the Meadow Creek Trail to the Disgrace Butte Vermilion Peak Trail (Forest Service Trail 609), then northeast along the Disgrace Butte Vermilion Peak Trail to the Buck Lake Creek Drake Creek Trail (Forest Service Trail 628), then northeast along the Buck Lake Creek Drake Creek Trail to the Unit 16A boundary at Drake Saddle.* (4-3-95)

39. ~~Hunt Area 16A-2.~~ *That portion of Unit 16A south and east of the following boundary: Beginning at Anderson Butte, then east along the Drive Ridge Trail (Forest Service Trail 809) to the Meadow Creek Trail (Forest Service Trail 726), then east along the Meadow Creek Trail to the Disgrace Butte Vermilion Peak Trail (Forest Service Trail 609), then northeast along the Disgrace Butte Vermilion Peak Trail to the Buck Lake Creek Drake Creek Trail (Forest Service Trail 628), then northeast along the Buck Lake Creek Drake Creek Trail to the Unit 16A boundary at Drake Saddle.* (4-3-95)

40. ~~Hunt Area 17-1.~~ *That portion of Unit 17 north of the Selway River from Fog Mountain Road (Forest Service Road 319) upstream to and including the west side of the Moose Creek drainage, the North Fork Moose Creek drainage, and the north side of the East Fork Moose Creek drainage upstream to, but excluding, Cedar Creek.* (3-15-02)

41. ~~Hunt Area 17-2.~~ *That portion of Unit 17 east of the Selway River from the mouth of Moose Creek upstream to and including the Bear Creek drainage, and that portion on the east side of the Moose Creek and East Fork Moose Creek drainages from the mouth of Moose Creek upstream to and including the Cedar Creek drainage.* (3-15-02)

42. ~~Hunt Area 17-3.~~ *That portion of Unit 17 south and west of the Selway River from and including the Mink Creek drainage upstream to and including the Goat Creek drainage.* (3-15-02)

43. ~~Hunt Area 17-4.~~ *That portion of Unit 17 west of the Selway River from, but excluding the Goat Creek drainage, upstream to Forest Service Road 468.* (3-15-02)

44. ~~Hunt Area 17-5.~~ *That portion of Unit 17 east of the Selway River upstream from, but excluding the Bear Creek drainage to Forest Service Road 468; all of the Selway River drainage south of Forest Service Road 468.* (3-15-02)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

45. ~~Hunt Area 19-1.~~ That portion of Unit 19 outside the Gospel Hump Wilderness boundary. (4-3-95)
46. ~~Hunt Area 19-2.~~ That portion of Unit 19 within the Gospel Hump Wilderness boundary. (4-3-95)
47. ~~Hunt Area 19A.~~ All of Unit 19A. (4-5-00)
48. ~~Hunt Area 20-1.~~ That portion of Unit 20 within South Fork of Red River, the Big Mallard Creek and Little Mallard Creek drainages and the Salmon River drainage from the Big Mallard drainage to but EXCLUDING the Bargamin Creek drainage. (4-3-95)
49. ~~Hunt Area 20-2.~~ That portion of Unit 20 within the Bargamin Creek drainage, and that portion on the north side of the Salmon River to, but excluding, the Sabe Creek drainage. (4-3-95)
50. ~~Hunt Area 20-3.~~ That portion of Unit 20 within the Sabe Creek drainage. (4-3-95)
51. ~~Hunt Area 20-4.~~ That portion of Unit 20 from the Mackay Bar Road (Forest Service Road 222) upstream to and including the Elkhorn Creek drainage. (4-3-95)
52. ~~Hunt Area 20A-1.~~ That portion of Unit 20A east of the following Forest Service trails: Beginning at the Salmon River on Forest Service Trail 039, then south on Trail 039 to Forest Service Trail 038, then south on Trail 038 to Forest Service Trail 002, then south on Trail 002 to the south boundary of Unit 20A. (4-3-95)
53. ~~Hunt Area 20A-2.~~ That portion of Unit 20A within the following boundary: Beginning at the Salmon River on Forest Service Trail 033, then south on Trail 033 to Forest Service Trail 007, then southwest on Trail 007 to the south boundary of Unit 20A, then east on the Unit 20A boundary to Forest Service Trail 002 to Forest Service Trail 038, then northeast on Trail 038 to Forest Service Trail 039, then northeast on Trail 039 to the Salmon River, then northwest on the unit boundary to Forest Service Trail 033, the point of beginning. (4-3-95)
54. ~~Hunt Area 20A-3.~~ That portion of Unit 20A north and west of the following Forest Service trails: Beginning at the Salmon River on Forest Service trail 033, then southwest on Trail 033 to Forest Service Trail 007, then southwest on Trail 007 to the south boundary of Unit 20A. (4-3-95)
55. ~~Hunt Area 21.~~ All of Units 21 and 21A. (4-3-95)
56. ~~Hunt Area 25.~~ All of Unit 25. (4-5-00)
57. ~~Hunt Area 26.~~ That portion of Unit 26 on the north side of Big Creek downstream from, but excluding, the Smith Creek drainage, and the south side of Big Creek downstream from and including the Little Marble Creek drainage. (7-1-98)
58. ~~Hunt Area 29.~~ All of Units 29, 30, 30A, and 37A. (3-15-02)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

- ~~59. **Hunt Area 44.** That portion of Unit 44 east of the Fairfield-Couch Summit-Five Points Road, and all of Units 48 and 49. (3-15-02)~~
- ~~60. **Hunt Area 50.** All of Unit 50. (4-3-95)~~
- ~~61. **Hunt Area 51.** All of Unit 51. (4-5-00)~~
- ~~62. **Hunt Area 56.** All of Units 56, 73, and 73A. (4-5-00)~~
- ~~63. **Hunt Area 59.** All of Units 59 and 59A. (4-3-95)~~
- ~~64. **Hunt Area 60.** All of Unit 60. (4-3-95)~~
- ~~65. **Hunt Area 60A.** That portion of Unit 60A south and east of the North Fork (Henry's Fork) of the Snake River, and that portion within one (1) mile north and west of the North Fork of the Snake River. (3-15-02)~~
- ~~66. **Hunt Area 61-1.** That portion of Unit 61 west of East Dry Creek and Yale-Kilgore Roads. (4-3-95)~~
- ~~67. **Hunt Area 61-2.** That portion of Unit 61 east of East Dry Creek and Yale-Kilgore Roads and west of U.S. 191-20 and south and west of State Highway 87. (4-3-95)~~
- ~~68. **Hunt Area 61-3.** That portion of Unit 61 north of State Highway 87 and that portion east of U.S. Highway 191-20 EXCEPT that portion enclosed by the Big Springs Loop Road and U.S. Highway 191-20. (4-3-95)~~
- ~~69. **Hunt Area 62.** All of Unit 62. (4-3-95)~~
- ~~70. **Hunt Area 62A.** All of Unit 62A. (4-3-95)~~
- ~~71. **Hunt Area 63A.** All of Units 63 and 63A. (3-15-02)~~
- ~~72. **Hunt Area 64.** All of Unit 64. (3-15-02)~~
- ~~73. **Hunt Area 65.** All of Unit 65. (4-3-95)~~
- ~~74. **Hunt Area 66-1.** That portion of Unit 66 north of main Bear Creek EXCEPT the Pritchard and Garden Creek drainages. (4-3-95)~~
- ~~75. **Hunt Area 66-2.** That portion of Unit 66 south of main Bear Creek. (4-3-95)~~
- ~~76. **Hunt Area 66-3.** All of Units 66 and 69. (4-5-00)~~
- ~~77. **Hunt Area 66A.** All of Unit 66A. (3-15-02)~~
- ~~78. **Hunt Area 67-1.** That portion of Unit 67 north and west of State Highway 31.~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

(4-3-95)

79. ~~Hunt Area 67-2.~~ That portion of Unit 67 south and east of State Highway 31. (4-3-95)
80. ~~Hunt Area 69-1.~~ That portion of Unit 69 west of the Grays Lake Long Valley-Bone-Iona Road. (4-3-95)
81. ~~Hunt Area 69-2.~~ That portion of Unit 69 east of the Grays Lake Long Valley-Bone-Iona Road EXCEPT the Antelope and Granite Creek drainages. (4-3-95)
82. ~~Hunt Area 69-3.~~ That portion of Unit 69 within the Antelope and Granite Creek drainages, and that portion of Unit 66 within the Pritchard and Garden Creek drainages. (4-3-95)
83. ~~Hunt Area 70.~~ All of Unit 70. (4-3-95)
84. ~~Hunt Area 71-1.~~ That portion of Unit 71 located in Bannock and Bingham counties. (4-3-95)
85. ~~Hunt Area 71-2.~~ That portion of Unit 71 located in Caribou County. (4-3-95)
86. ~~Hunt Area 72.~~ All of Unit 72. (4-3-95)
87. ~~Hunt Area 74.~~ All of Unit 74. (4-3-95)
88. ~~Hunt Area 75.~~ All of Unit 75. (3-15-02)
89. ~~Hunt Area 76-1.~~ That portion of Unit 76 within the following boundary: Beginning at Soda Springs on State Highway 34, then northeast to the Lanes Creek Road at Wayan, then south along the Lanes Creek Diamond Creek Road to Timber Creek Road, then northeast along Timber Creek Smoky Canyon Stump Creek Road to the Idaho-Wyoming state line, then south along the state line to the Crow Creek Road, then southwest along Crow Creek Wells Canyon Georgetown Canyon Road to U.S. 30, then north along U.S. 30 to Soda Springs, the point of beginning. (3-15-02)
90. ~~Hunt Area 76-2.~~ That portion of Unit 76 south of the Georgetown Wells Canyon-Crow Creek Road. (3-15-02)
91. ~~Hunt Area 76-3.~~ That portion of Unit 76 north and east of the following boundary: Beginning at the Idaho-Wyoming state line, then west along the Stump Creek Smoky Canyon Timber Creek Road to the Diamond Creek Road, then north along the Diamond Creek Lanes Creek Road to State Highway 34 at Wayan. (3-15-02)
92. ~~Hunt Area 77.~~ All of Unit 77. (4-3-95)
93. ~~Hunt Area 78.~~ All of Unit 78. (4-3-95)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

703. CONTROLLED HUNT AREA DESCRIPTIONS -- ANTELOPE.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.

()

- ~~01. Hunt Area 29.~~ All of Unit 29 except the Poison Creek drainage. (3-30-07)
- ~~02. Hunt Area 30.~~ All of Unit 30 and that portion of Unit 21A south and east of Carmen Creek Road. (3-30-07)
- ~~03. Hunt Area 30A.~~ All of Unit 30A. (7-1-98)
- ~~04. Hunt Area 32.~~ All of Units 32 and 32A (3-30-01)
- ~~05. Hunt Area 36B.~~ All of Unit 36B, and that portion of Unit 28 upstream from and including the Iron Creek drainage. (3-15-02)
- ~~06. Hunt Area 37.~~ All of Unit 37 and 37A, and that part of Unit 29 in the Poison Creek drainage. (3-30-07)
- ~~07. Hunt Area 39.~~ That portion of Unit 39 south and east of Highway 21. (3-30-07)
- ~~08. Hunt Area 40.~~ All of Unit 40. (10-26-94)
- ~~09. Hunt Area 41.~~ That portion of Unit 41 east of State Highway 51. (10-26-94)
- ~~10. Hunt Area 42.~~ That portion of Unit 41 west of State Highway 51 and all of Unit 42. (10-26-94)
- ~~11. Hunt Area 44.~~ All of Unit 44 and that portion of Unit 45 within the Camas Creek drainage. (10-26-94)
- ~~12. Hunt Area 45-1.~~ All of Unit 45 EXCLUDING that portion within the Camas Creek drainage. (3-30-07)
- ~~13. Hunt Area 45-2.~~ Private land within Unit 45 EXCLUDING that portion within the Camas Creek drainage. (3-30-07)
- ~~14. Hunt Area 46-1.~~ All of Unit 46. (3-30-07)
- ~~15. Hunt Area 46-2.~~ Private land within Units 46 and 54 and private land within that portion of Unit 47 east of Salmon Falls Creek. (3-30-07)
- ~~16. Hunt Area 47.~~ All of Unit 47. (10-26-94)
- ~~17. Hunt Area 49.~~ All of Unit 49. (3-30-07)
- ~~18. Hunt Area 50.~~ All of Unit 50. (See Craters of the Moon closure.) (3-30-07)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

- ~~19. Hunt Area 51. All of Unit 51 and that portion of Unit 63 within Butte County.~~ (3-30-07)
- ~~20. Hunt Area 52. All of Units 48 and 52.~~ (3-30-07)
- ~~21. Hunt Area 52A. All of Units 52A and 53. (See Craters of the Moon closure.)~~ (3-30-07)
- ~~22. Hunt Area 54. All of Unit 54.~~ (3-13-96)
- ~~23. Hunt Area 58. All of Unit 58.~~ (3-30-07)
- ~~24. Hunt Area 59. All of Units 59 and 59A.~~ (3-20-96)
- ~~25. Hunt Area 60A. All of Units 60 and 60A, and that portion of Unit 61 west of Hotel Creek.~~ (3-20-96)
- ~~26. Hunt Area 61. That portion of Unit 61 east of Hotel Creek.~~ (10-26-94)
- ~~27. Hunt Area 63-1. That portion of Unit 63 south of State Highway 33.~~ (3-30-07)
- ~~28. Hunt Area 63-2. That portion of Unit 63 north of State Highway 33, EXCLUDING the Camas National Wildlife Refuge which is CLOSED.~~ (3-30-07)
- ~~29. Hunt Area 68. All of Unit 68.~~ (10-26-94)

704. CONTROLLED HUNT AREA DESCRIPTIONS -- ROCKY MOUNTAIN BIGHORN SHEEP.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.

()

~~01. Hunt Area 11. That portion of Unit 11 that drains into the Snake River downstream from, but excluding, the Corral Creek drainage to, but excluding, the Tenmile Creek Canyon drainage.~~ (3-15-02)

~~02. Hunt Area 19. Those portions of Units 14, 19 and 20 from the Red River Ranger Station White River Ranch Road (Forest Service Road 421) downstream to and including the Wind River drainage.~~ (3-15-02)

~~03. Hunt Area 20-1. That portion of Unit 20 upstream from Sabe Creek, that portion of Unit 21 downstream from the Horse Creek Trail (Forest Service Trail 159) and Reynolds Creek Trail (Forest Service Trail 067) and that portion of Unit 17 upstream from the Witter Ridge Trail (Forest Service Trail 75) and the Thompson Flat Wood Hump Surprise Creek Trail (Forest Service Trail 031).~~ (7-1-98)

~~04. Hunt Area 20-2. That portion of Unit 20 downstream from the Nez Perce-~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

~~Bitterroot Forest boundary along Sabe Creek to the Red River Ranger Station White Water Ranch Road. (7-1-98)~~

~~05. **Hunt Area 20A.** Those portions of Unit 20A upstream from and including the Butts Creek drainage to the Middle Fork of the Salmon River, and within the Middle Fork of the Salmon River drainage upstream to Papoose Creek Papoose Lake Coyote Springs. (7-1-98)~~

~~06. **Hunt Area 21.** That portion of Unit 21 downstream from the Spring Creek Road (Forest Service Road 038) to the Horse Creek Trail (Forest Service Trail 159) and Reynolds Creek Trail (Forest Service Trail 067). (7-1-98)~~

~~07. **Hunt Area 26.** All of Unit 26 and that portion of Unit 20A within the Middle Fork of the Salmon River drainage upstream from Papoose Creek Papoose Lake Coyote Springs and that portion of Unit 27 on the west side of the Middle Fork of the Salmon River from Big Creek upstream to and including the Brush Creek drainage. (7-1-98)~~

~~08. **Hunt Area 27-1.** That portion of Unit 27 west of the Middle Fork of the Salmon River upstream from but excluding the Brush Creek drainage to and including the Indian Creek drainage. (7-1-98)~~

~~09. **Hunt Area 27-2.** That portion of Unit 27 east of the Middle Fork of the Salmon River upstream from its mouth to the Waterfall Creek Trail (Forest Service Trail 045). (7-1-98)~~

~~10. **Hunt Area 27-3.** That portion of Unit 27 east of the Middle Fork of the Salmon River upstream from the Waterfall Creek Trail (Forest Service Trail 045) to and including the Camas Creek drainage on the north side of Camas Creek, and that portion of Unit 28 within the Camas Creek drainage north of Camas Creek and west of the Silver Creek Meyers Cove Road (Forest Service Road 108). (7-1-98)~~

~~11. **Hunt Area 27-4.** That portion of Unit 27 within the Loon Creek drainage; that portion of Unit 27 east of the Middle Fork of the Salmon River, south of Camas Creek, and northwest of Fly Creek Trail (Forest Service Trail 124), that portion of Unit 36 within the Yankee Fork drainage. (3-15-02)~~

~~12. **Hunt Area 28.** That portion of Unit 28 within the Pine Creek and Panther Creek drainages, and the south side of the main Salmon River from Pine Creek downstream to, but excluding, the Middle Fork of the Salmon River drainage. (4-5-00)~~

~~13. **Hunt Area 30.** All of Units 30 and 30A. (3-15-02)~~

~~14. **Hunt Area 36B.** All of Unit 36B; that portion of Unit 28 south of and including the Hat Creek drainage; that portion of Unit 28 west of the Panther Creek Road and south of the Silver Creek Meyers Cove Road; and that portion of Unit 27 southeast of Fly Creek Trail (Forest Service Trail 124) and northeast of the Sleeping Deer Road (Forest Service Road 086). (3-15-02)~~

~~15. **Hunt Area 37.** All of Unit 37. That portion of Unit 50 east of U.S. Highway 93 and that portion of Unit 51 west of the Howe-Goldburg Road. (7-1-98)~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

705. CONTROLLED HUNT AREA DESCRIPTIONS -- MOUNTAIN GOAT.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.

()

- ~~01. Hunt Area 10-1. That portion of Unit 10 within the Isabella Creek drainage.~~
(4-3-95)
- ~~02. Hunt Area 10-2. That portion of Unit 10 within the Collins Creek drainage.~~
(4-3-95)
- ~~03. Hunt Area 18. Those portions of Units 18 and 22 within the Snake River drainage from and including Brush Creek drainage downstream to and including the Sheep Creek drainage, and that portion of Unit 23 within the Rapid River drainage.~~
(7-1-98)
- ~~04. Hunt Area 27-1. That portion of Unit 27 south of Forest Service Road 172 from Loon Creek summit to Loon Creek guard station, Pinyon Peak, and Feltman Creek Point, and that portion of Unit 36 from Forest Service Road 172 west to the Pioneer Creek West Fork Yankee Fork Trail (Forest Service Trail 113-155.)~~
(3-15-02)
- ~~05. Hunt Area 27-2. That portion of Unit 27 east of the Middle Fork of the Salmon River, south of Camas Creek, northwest of Fly Creek Trail (Forest Service Trail 124) and Mahoney Creek Trail (Forest Service Trail 121), north of Warm Springs Creek and north of Loon Creek.~~
(3-15-02)
- ~~06. Hunt Area 27-3. That portion of Unit 27 east of the Middle Fork of the Salmon River and north of Camas Creek to the Waterfall Creek Trail (Forest Service Trail 045) and that portion of Unit 28 within the Yellowjacket Creek drainage.~~
(3-15-02)
- ~~07. Hunt Area 30. Those portions of Units 21A and 30 south of and including the Freeman Creek drainage to the Agency Creek Lemhi Pass Road.~~
(4-3-95)
- ~~08. Hunt Area 36A-1. That portion of Unit 50 north of Trail Creek Road and west of U.S. 93, and that portion of Unit 36A south and east of the East Fork of the Salmon River from and including the Herd Creek drainage upstream to and including the West Pass Creek drainage.~~
(3-15-02)
- ~~09. Hunt Area 36A-2. That portion of Unit 36A, including all headwaters of the East Fork of the Salmon River upstream from, but excluding, the Germania Creek drainage on the west and upstream from, but excluding, the West Pass Creek drainage on the east.~~
(4-3-95)
- ~~10. Hunt Area 36A-3. That portion of Unit 36A, north and west of the East Fork of the Salmon River downstream from, but excluding, the Germania Creek drainage, and that portion of Unit 36 on the south and east sides of the main Salmon River downstream from, but excluding, the Fourth of July Creek drainage above Stanley.~~
(4-3-95)
- ~~11. Hunt Area 36A-4. That portion of Unit 36A within the Germania Creek drainage, and that portion of Unit 36 within the Salmon River drainage east of State Highway 75 from and~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

FISH AND GAME COMMISSION Taking of Big Game Animals in the State of Idaho

Docket No. 13-0108-0701
PENDING RULE

including the Fourth of July Creek drainage upstream to and including the Pole Creek drainage.
(4-3-95)

12. ~~Hunt Area 36B.~~ *That portion of Unit 36B south of and including the Challis Creek drainage; that portion of Unit 36 east of the Yankee Fork Mill Creek Summit Road.* (4-3-95)

13. ~~Hunt Area 48.~~ *That portion of Unit 48 north and east of State Highway 75 and that portion south and west of State Highway 75 upstream from and including the Baker Creek drainage.* (4-3-95)

14. ~~Hunt Area 50.~~ *All of Unit 49 and that portion of Unit 50 south and east of the Trail Creek Road and south and west of U.S. Highway 93.* (3-15-02)

15. ~~Hunt Area 51.~~ *That portion of Unit 29 south of and excluding the Big Timber Creek drainage, that portion of Unit 51 east of the Howe-Goldburg Road and that portion of Unit 58 west of State Highway 28.* (4-3-95)

16. ~~Hunt Area 59A.~~ *All of Unit 59A and that portion of Unit 58 east of State Highway 28.* (7-1-98)

17. ~~Hunt Area 67.~~ *All of Unit 67.* (3-15-02)

706. CONTROLLED HUNT AREA DESCRIPTIONS -- CALIFORNIA BIGHORN SHEEP.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.
()

01. ~~Hunt Area 41.~~ *That portion of Unit 41 within the Big Jack Creek drainage.* (3-15-02)

02. ~~Hunt Areas 42-1, and 42-2.~~ *All of Unit 42 and that portion of Unit 41 within the East Fork and South Fork of the Owyhee River drainages outside the Duck Valley Indian Reservation boundary.* (3-15-02)

707. CONTROLLED HUNT AREA DESCRIPTIONS - BLACK BEAR.

Pursuant to Section 36-105(3), Idaho Code, the Commission now sets seasons by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.
()

01. ~~Hunt Area 1.~~ *That portion of Unit 1 within the Priest River drainage, south of and including the Lamb Creek drainage to the west of Priest Lake, and south of and including the Soldier Creek drainage to the east of Priest Lake.* (10-26-94)

02. ~~Hunt Areas 22-1 and 22-2.~~ *All of Units 22 and 31.* (10-26-94)

03. ~~Hunt Areas 32-1 and 32-2.~~ *All of Units 32 and 32A.* (10-26-94)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.09 - RULES GOVERNING THE TAKING OF GAME BIRDS IN THE STATE OF IDAHO

DOCKET NO. 13-0109-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Increase the number and type of turkey tags available. Allow Department sponsored youth waterfowl hunts at the Hagerman Wildlife Management Area. Amend references to the WMA pheasant permit to the WMA Upland Game Bird Permit to be consistent with statutory amendment (S 1010). Delete obsolete hunting area descriptions for Chukar Partridge, Gray Partridge, and Quail.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 288 through 295.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Tom Hemker (208) 287-2749 and Don Kemner (208) 287-2748.

DATED this 13th day of November, 2007.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut / P.O. Box 25
Boise, Idaho 83707

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION
Rules Governing the Taking of Game Birds

Docket No. 13-0109-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 17, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Increase the number and type of turkey tags available. Allow Department sponsored youth waterfowl hunts at the Hagerman Wildlife Management Area. Amend references to the WMA pheasant permit to the WMA Upland Game Bird Permit to be consistent with statutory amendment (S 1010). Delete obsolete hunting area descriptions for Chukar Partridge, Gray Partridge, and Quail.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The temporary rule confers a benefit to outfitters and hunters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to comply with statutory amendments and the need to comply with printing schedules for the 2007 hunting seasons.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing the Taking of Game Birds

Docket No. 13-0109-0701
PENDING RULE

rule, contact Tom Hemker (208) 287-2749 and Don Kemner (208) 287-2748.

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 21st day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

100. TAGS, STAMPS, PERMITS, AND VALIDATIONS.

01. Sage Grouse or Sharp-Tailed Grouse. No person shall hunt sage or sharp-tailed grouse anywhere within the state, except licensed shooting preserves, without having in his or her possession the appropriate hunting license that has been validated for sage grouse. The validation shall be valid from January 1 through December 31 of each year. (3-30-01)

02. Migratory Game Birds. No person shall hunt ducks, geese, brant, coots, common snipe, sandhill cranes, or mourning doves anywhere within the state, without having in his or her possession the appropriate hunting license that has been validated for the Federal Migratory Game Bird Harvest Information Program. The validation shall be valid from January 1 through December 31 of each year. (7-1-98)

03. Wild Turkey. No person shall hunt wild turkey without having in his or her possession the appropriate hunting license, tag, and controlled hunt permit. Persons obtaining and using tags, stamps, and permits must comply with the following requirements: (7-1-98)

a. There are four (4) turkey tags available each calendar year. These are the ~~spring~~ general tag, ~~spring-controlled~~ extra tag, ~~late-spring/fall-general~~ controlled depredation tag, and ~~fall-controlled~~ special unit tag. Only three (3) turkey tags of the following may be purchased each year: general, extra, and controlled depredation. In addition to the previously mentioned three (3) turkey tags, three (3) special unit tags may also be purchased. A hunter may not obtain both a spring general and a spring controlled turkey tag during the spring. (5-3-03)(____)

b. Permits for Controlled Hunts: Any person who receives a controlled hunt permit for wild turkey is prohibited from using that permit/tag to hunt in any other wild turkey hunt. (4-5-00)

c. Nonresident permit limitations: On controlled hunts with ten (10) or fewer permits, not more than one (1) permit will be issued to nonresidents. On controlled hunts with more than ten (10) permits, not more than ten percent (10%) of the permits may be issued to nonresidents. (7-1-98)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing the Taking of Game Birds

**Docket No. 13-0109-0701
PENDING RULE**

- d.** Eligibility: The holders of valid hunting licenses are eligible to apply for controlled hunts subject to the following restrictions: (7-1-93)
- i.** Holders of a Type 208 Nongame Hunting License may not apply for any controlled hunt. (7-1-93)
- ii.** In the event a permit is issued based on erroneous information, the permit will be invalidated and the person will remain on the drawn list. (7-1-93)
- e.** Applications: Applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than February 15, annually. Applications must comply with the following requirements: (2-7-95)
- i.** Holders of a Duplicate License (Type 501) must use their original license number to apply for a controlled hunt. Duplicate license numbers will not be accepted. (7-1-93)
- ii.** Only one (1) application card per person or group will be accepted. Additional application cards will result in all applicants being declared ineligible. (7-1-93)
- iii.** Fees: All applicants for controlled hunts must submit a non-refundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. If you are successful, you will be issued a permit that entitles you to purchase the appropriate controlled hunt tag, beginning April 1, at any license vendor or Fish and Game office by presenting your hunting license and controlled hunt permit. (7-1-98)
- iv.** A single payment (either cashier's check, money order, certified check, or personal check) may be submitted to cover fees for all applications in the same envelope. If a check or money order is insufficient to cover the fees, all applications will be voided and returned. (2-7-95)
- v.** A "group application" is defined as two (2) hunters applying for the same controlled hunt on the same application. (2-7-95)
- vi.** Hunting license and tag fees will NOT be refunded to unsuccessful applicants. (7-1-93)
- vii.** All spring wild turkey hunters may apply for a Fall turkey controlled hunt permit during the same calendar year. (3-30-01)
- f.** Drawing information: Single or group applications which are not drawn for the first choice hunt will automatically be entered into a second choice drawing provided the second choice hunt applied for has not been filled. (7-1-93)
- g.** Tag validation and attachment: Immediately after any wild turkey is killed, the turkey tag must be validated and securely attached to the wild turkey. (7-1-93)
- h.** To validate the tag, the hunter must cut out and completely remove two (2)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing the Taking of Game Birds

**Docket No. 13-0109-0701
PENDING RULE**

triangles on the border of the tag, one (1) for the month and one (1) for the day of the kill.

(7-1-93)

- i. The tag must remain attached so long as the turkey is in transit or storage. (7-1-93)

04. Early September Canada Goose Hunts. (7-1-98)

a. Controlled Hunts: No person shall hunt Canada geese during controlled, early September seasons (September 1-15) without having in his or her possession the appropriate hunting license and controlled hunt permit. Persons obtaining and using controlled hunt permits must comply with the following requirements: (7-1-98)

i. Applications: Applications for controlled hunts shall be made on a form prescribed by the Department and must be received at the Headquarters Office of the Idaho Department of Fish and Game or postmarked not later than July 15, annually. Applications must comply with the following requirements: (4-5-00)

ii. Fees: All applicants for controlled hunts must submit a nonrefundable application fee with their application; one dollar (\$1) of this fee may be donated to the Citizens Against Poaching Program. Successful applicants will be issued a permit that entitles them to hunt. The Federal Migratory Bird Stamp is required by any person seventeen (17) years of age and older, respectively (Title 50 Code of Federal Regulations, Part 20). (3-30-01)

iii. The following rules previously established for wild turkey also apply to early September Canada goose hunts: Subsections 100.03.b., 100.03.c., 100.03.d., 100.03.e.ii., 100.03.e.iv. through 100.03.e.vi., and 100.03.f. (3-30-01)

iv. Any controlled hunt permits for Canada geese that remain unsold after the controlled hunt drawing may be sold by the Department on a first-come, first-served basis.

(7-1-98)

(BREAK IN CONTINUITY OF SECTIONS)

400. AREAS CLOSED TO HUNTING OF GAME BIRDS.

01. General. Hunting, killing, or molesting of any game bird is prohibited in the following areas: (7-1-93)

a. That area of Craters of the Moon National Monument in Blaine and Butte Counties prior to the November 2000 expansion of the Monument by Presidential decree. It is the hunter's responsibility to check with the Park Service to be able to identify the closed area. (4-6-05)

b. Hagerman Fossil Beds National Monument in Twin Falls County, EXCEPT that portion within an area fifty (50) feet in elevation above the high water level of the Snake River (the upslope area is marked by yellow fiberglass markers, and hunting is permitted downslope to

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing the Taking of Game Birds

Docket No. 13-0109-0701
PENDING RULE

the river). (3-20-97)

c. Harriman State Park Wildlife Refuge in Fremont County. (7-1-93)

d. Nez Perce National Historical Park in Clearwater, Idaho, and Nez Perce Counties. (7-1-93)

e. That portion of Ada County within Veterans Memorial Park and the area between State Highway 21, Warm Springs Avenue and the Boise City limits. (5-3-03)

f. Yellowstone National Park in Fremont County. (7-1-93)

g. Fort Boise Wildlife Management Area (WMA) in Canyon County from September 15 through the end of the waterfowl hunting season in the area enclosed by the following boundary: Beginning at the bridge across Sand Hollow Creek on Old Fort Boise Road approximately one hundred (100) yards west of the WMA headquarters, then north along the east bank of Sand Hollow Creek to its confluence with the Snake River, then north and northeast downstream along the east bank of the Snake River to the WMA boundary fence, then south and southeast along the WMA boundary fence to Old Fort Boise Road, then west on Old Fort Boise Road to the point of beginning. (3-20-97)

h. Roswell Marsh Wildlife Habitat Area in Canyon County on Sundays, Mondays, Tuesdays and Wednesdays from September 15 through the end of the waterfowl hunting season in the area south of Highway 18 and west of Pebble Lane (Roswell Marsh segment). (5-3-03)

i. On any of those portions of federal refuges, State game preserves, State wildlife management areas, bird preserves, bird refuges, and bird sanctuaries for which bird hunting closures have been declared by legislative or Commission action EXCEPT as otherwise expressly stated below in Section 410 under Game Preserves Open to Hunting of Game Birds. (7-1-93)

j. Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property that encompasses the lake. (4-6-05)

02. Migratory Game Birds. In addition to the areas listed above, hunting, killing, or molesting of any migratory game bird EXCEPT mourning dove is prohibited in the following areas. Areas CLOSED to hunting of migratory game birds: (7-1-93)

a. Fort Hall Indian Reservation in Bingham, Bannock, and Power Counties within three hundred (300) yards each way of the Fort Hall Bluffs from Bigbend Boat Launch to the west boundary of the Fort Hall Indian Reservation, and within one hundred (100) yards of any improved roadway or inhabited dwelling any place within the reservation boundary. (7-1-93)

b. Hagerman Wildlife Management Area (WMA) in Gooding County in the area enclosed by the following boundary: Beginning at a point two hundred (200) yards west of the point at which U.S. Highway 30 crosses the south bank of Gridley Island, then northwest along a line two hundred (200) yards southwest of and parallel to U.S. Highway 30 to a point two hundred (200) yards west of the junction of U.S. Highway 30 and the WMA entrance, then west and north and east along a line two hundred (200) yards outside of the WMA boundary which is marked by

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing the Taking of Game Birds

Docket No. 13-0109-0701
PENDING RULE

a fence, to the point at which the fence meets U.S. Highway 30, then east and south along a line five hundred (500) yards outside of the WMA boundary to the Snake River, then downstream along the north bank of the Snake River and then along the south bank of Gridley Island to the point where U.S. Highway 30 crosses the south bank of Gridley Island, then two hundred (200) yards west of U.S. Highway 30 to the point of beginning. Exception: Department sponsored youth waterfowl hunts. (7-1-93)()

c. Hubbard Reservoir in Ada County including the shoreline area within two hundred (200) yards of the existing water line. (7-1-93)

d. Mann's Lake in Nez Perce County and extending three hundred (300) yards beyond the Bureau of Reclamation property line that encompasses the lake. (3-15-02)

e. Mormon Reservoir in Camas County including the shoreline area within two hundred (200) yards of the ordinary high water line. (7-1-93)

f. Pend Oreille River in Bonner County within two hundred (200) yards each way of the ordinary high water line two thousand sixty-two and one-half (2,062.5) feet above sea level from the U.S. Highway 95 long bridge at Sandpoint downstream to an imaginary line between Springy Point on the south side of the river and Dover Peninsula on the north side of the river. (7-1-93)

g. Spokane River in Kootenai County from the Post Falls Dam to Lake Coeur d'Alene at the orange pilings, within two hundred (200) yards of the ordinary high water line two thousand one hundred twenty-eight (2,128) feet above sea level. (7-1-98)

h. Thompson Lake in Kootenai County in the area enclosed by the following center-of-roadway boundary and in the additional area within one hundred (100) yards of the exterior side of said boundary: Beginning at the junction of State Highway 97 and Thompson Lake Road 317 north of the town of Harrison, then along Thompson Lake Road 317 to the junction of Blue Lake Road 318 east of Thompson Lake, then along Blue Lake Road 318 to the junction of Anderson Lake Road 319 at Springston, then along Anderson Lake Road 319 to the Union Pacific Railroad tracks, then west along the Union Pacific Railroad tracks to the junction of State Highway 97 west of Harrison, then along State Highway 97 to the point of beginning. (7-1-93)

03. Geese. Areas CLOSED to the hunting of geese. In addition to the areas listed in Section 301 and Subsection 301.01 above, the hunting, killing, or molesting of any species of geese is prohibited in the following areas: (7-1-93)

a. Canyon County in the area enclosed by the following roadway boundary and within one hundred fifty (150) feet of the exterior side of said boundary (except that the closure shall extend to one hundred (100) yards from the exterior side of said boundary along that section commencing at the junction of Lake Shore Drive and Rim Road, then south on Rim Road to west Lewis Lane, then east on west Lewis Lane to Lake Shore Drive, then along Lake Shore Drive to Emerald Road): Beginning approximately three fourths (3/4) of a mile south of the City of Nampa at the junction of State Highway 45 (12th Avenue Road) and Greenhurst Road, then west following Greenhurst Road to its junction with Middleton Road, then north following Middleton Road to its junction with Lake Lowell Avenue, then west following Lake Lowell Avenue to its

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing the Taking of Game Birds

**Docket No. 13-0109-0701
PENDING RULE**

junction with Lake Avenue, then north following Lake Avenue to its junction with West Roosevelt Avenue, then west following West Roosevelt Avenue to its junction with Indiana Avenue, then north following Indiana Avenue to its junction with State Highway 55 (Karcher Road), then west following State Highway 55 to its junction with Riverside Road, then south following Riverside Road to the Deer Flat National Wildlife Refuge boundary, then west along boundary fence below lower embankment as posted to Lake Shore Drive, then in a southeast direction following Lake Shore Drive to its junction with Marsing Road, then east and south on Lake Shore Drive to Rim Drive, then south on Rim Drive to West Lewis Lane, then east on West Lewis Lane to Lake Shore Drive, then southeast on Lake Shore Drive to State Highway 45, then north on State Highway 45 to its junction with Greenhurst Road, the point of beginning. (7-1-93)

b. Hagerman Valley in Gooding and Twin Falls Counties in the area enclosed by the following boundary: Beginning at the Gridley Island Bridge on the Snake River, then south and east on U.S. Highway 30 to Miracle Hot Springs, then east on Twin Falls County 4800 North Road (River Road) to Banbury Hot Springs, then upstream approximately three hundred (300) yards to the Banbury Pipeline crossing the Snake River, then east across the Snake River at the Banbury Pipeline, continuing due east to a point two hundred (200) yards east of the east rim of the Snake River Canyon, then north along a line parallel to and two hundred (200) yards east of the Snake River Canyon rim to the Gooding County 3500 South Road (Camp Roach Road), then east on the 3500 South Road to the 1500 East Road, then north on the 1500 East Road to the 3200 South Road, then west on the 3200 South Road to the 1300 East Road, then north on the 1300 East Road to the 1200 East Road, then northwest and north on the 1200 East Road to the 3000 South Road, then west on the 3000 South Road to a point (which is five hundred (500) yards east of the intersection of the 3000 South Road and the Hagerman National Fish Hatchery Road) five hundred (500) yards east of the Hagerman Wildlife Management Area (WMA) boundary, then north and west five hundred (500) yards outside the Hagerman WMA boundary to U.S. Highway 30, then west and south two hundred (200) yards outside the Hagerman WMA boundary to the 2900 South Road, then west on the 2900 South Road to the 900 East Road, then due south to a point two hundred (200) yards north of the Snake River, then west and north two hundred (200) yards outside the high water line on the east bank of the Snake River to Lower Salmon Dam, then west across the Snake River, then south, southwest and east two hundred (200) yards outside the high water line on the west bank of the Snake River (including the Idaho Power Upper Salmon Dam diversion canal) to the Gridley Bridge on U.S. Highway 30, the point of beginning. (12-7-94)

c. Minidoka and Cassia Counties in the area enclosed by the following boundary: Within two hundred (200) yards of the high water line of the Snake River from Milner Dam upstream to Meridian Road (north side of the Snake River) and 650 East Road (south side of the Snake River), approximately six and one-half (6 1/2) miles east of the City of Burley. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

600. PHEASANT SEASONS, BAG AND POSSESSION LIMITS.

01. Area 1. Area 1 includes Benewah, Bonner, Boundary, Clearwater, Idaho,

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing the Taking of Game Birds

Docket No. 13-0109-0701
PENDING RULE

Kootenai, Latah, Lewis, Nez Perce, and Shoshone Counties. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

02. Area 2. Area 2 includes Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Cassia, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Minidoka, Oneida, Power, Twin Falls, and Teton counties. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

03. Area 3. Area 3 includes Ada, Adams, Boise, Blaine, Camas, Canyon, Elmore, Gem, Gooding, Jerome, Lincoln, Owyhee, Payette, Twin Falls, Valley, and Washington Counties (including all islands in the Snake River EXCEPT PATCH AND PORTER ISLANDS). Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

04. WMA ~~Pheasant~~ Upland Game Permit. (~~10-26-94~~)()

a. Permit Requirement. Any person seventeen (17) years of age or older hunting for or having a pheasant in his or her possession on Fort Boise, C.J. Strike, Montour, Payette River, Sterling, Market Lake, Mud Lake, Cartier, or Niagara Springs Wildlife Management Areas must have a valid WMA Pheasant Permit in his or her possession. (4-6-05)

b. Permit Limit. The WMA ~~Pheasant~~ Upland Game Bird Permit limit is six (6) cocks. Additional permits may be purchased. (~~5-3-03~~)()

c. Recording Harvest. Any person harvesting a pheasant on any of the Wildlife Management Areas listed in Subsection 600.04.a. must immediately record their harvest, in writing, on the back of their permit. (4-6-05)

05. Youth Pheasant Season. This season shall be open statewide. (7-1-99)

a. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)

b. The Youth Pheasant Season shall be open for all licensed hunters fifteen (15) years of age or younger. All youth hunters must be accompanied by an adult eighteen (18) years or older. One (1) adult may take more than one (1) youth hunter. (5-3-03)

601. CHUKAR PARTRIDGE SEASONS, BAG AND POSSESSION LIMITS.

~~**01. Area 1.** Area 1 includes, Ada, Adams, Benewah, Boise, Bonners, Boundary, Canyon, Clearwater, Gem, Idaho, Kootenai, Latah, Lewis, Nez Perce, Payette, Shoshone, Valley, Washington, Owyhee County west of the following boundary: beginning at the Idaho-Nevada~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing the Taking of Game Birds

Docket No. 13-0109-0701
PENDING RULE

~~border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County west of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.~~ (4-6-05)()

~~02. Area 2. Area 2 includes, Lemhi County, not including Birch Creek Valley, and Custer County in the Salmon River drainage. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.~~ (4-6-05)

~~03. Area 3. Area 3 includes, Fremont, Clark, Lemhi County within Birch Creek Valley, Custer County within the big Lost Valley and the Little Lost Valley, Blaine, Camas, Owyhee County east of the following boundary: beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County east of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.~~ (4-6-05)

602. GRAY PARTRIDGE SEASONS, BAG AND POSSESSION LIMITS.

~~01. Area 1. Area 1 includes, Ada, Adams, Benewah, Boise, Bonners, Boundary, Canyon, Clearwater, Gem, Idaho, Kootenai, Latah, Lewis, Nez Perce, Payette, Shoshone, Valley, Washington, Owyhee County west of the following boundary: beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County west of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing the Taking of Game Birds

Docket No. 13-0109-0701
PENDING RULE

~~the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line.~~ Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possessions limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors. (4-6-05)()

~~02. Area 2. Area 2 includes, Lemhi County, not including Birch Creek Valley, and Custer County in the Salmon River drainage. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.~~ (4-6-05)

~~03. Area 3. Area 3 includes, Fremont, Clark, Lemhi County within Birch Creek Valley, Custer County within the big Lost Valley and the Little Lost Valley, Blaine, Camas, Owyhee County east of the following boundary: beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County east of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.~~ (4-6-05)

603. BOBWHITE QUAIL AND CALIFORNIA QUAIL SEASONS, BAG AND POSSESSION LIMITS.

01. Area 1. Area 1 includes Bannock, Bear Lake, Bingham, Bonneville, Butte, Caribou, Clark, Custer, Franklin, Fremont, Jefferson, Lemhi, Madison, Oneida, Power, and Teton Counties. Season for quail in Area 1 is CLOSED. (5-3-03)

02. Area 2. Area 2 includes Ada, Adams, Benewah, Blaine, Boise, Bonner, Boundary, Camas, Canyon, Cassia, Clearwater, Gem, Gooding, Idaho, Kootenai, Latah, Lewis, Nez Perce, Payette, Shoshone, Valley, Jerome, Lincoln, Minidoka, Twin Falls, Elmore, Washington, and Owyhee Counties west of the following boundary: beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County west of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing the Taking of Game Birds

Docket No. 13-0109-0701
PENDING RULE

~~confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.~~ (4-6-05)()

~~03. **Area 3.** Area 3 includes Blaine, Camas, Cassia, Gooding, Jerome, Lincoln, Minidoka, Twin Falls counties, and also included is that portion of Owyhee County east of the following boundary: beginning at the Idaho-Nevada border and the Jarbidge River, then north along the Jarbidge River to its confluence with the Bruneau River, then north along the Bruneau River to Bruneau, then north on State Highway 51 to the Owyhee-Elmore county line. Also included, is that portion of Elmore County east of the following boundary: beginning at State Highway 51 and the Owyhee-Elmore County line, then north on State Highway 51 to Interstate 84, then north on U.S. Highway 20 to the Anderson Ranch Dam Road (Forest Service Road 134), then up the center of Anderson Ranch Reservoir to the confluence of Fall Creek, then up Forest Service Road 129 to its junctions with Forest Service Road 156, then southeast on Forest Service Road 156 to Rocky Bar, then northeast on Forest Service Road 126 to James Creek Summit, then east along the watershed divide between the Middle and South Forks of the Boise River to the intersection with the Elmore-Camas County line. Pursuant to Section 36-105(3), Idaho Code, the Commission now sets the seasons, bag limits, and possession limits by proclamation. The proclamation is published in a brochure available at Department offices and license vendors.~~ (4-6-05)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.12 - RULES GOVERNING COMMERCIAL FISHING IN THE STATE OF IDAHO

DOCKET NO. 13-0112-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Amend the commercial species list to add Lake whitefish, delete several species, and correct the names of several species. Allow for the use of gill nets and define gill net requirements.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 296 through 299.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Fred Partridge (208) 287-2773.

DATED this 13th day of November, 2007.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION
Rules Governing Commercial Fishing

Docket No. 13-0112-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is May 21, 2007.

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-804, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Amend the commercial species list to add Lake whitefish, delete several species, and correct the names of several species. Allow for the use of gill nets and define gill net requirements.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons: The temporary rule confers a benefit to commercial fisherman.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the lack of an identifiable representative for commercial fisherman.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Fred Partridge (208) 287-2773.

Anyone may submit written comments regarding the proposed rulemaking. All written

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing Commercial Fishing

Docket No. 13-0112-0701
PENDING RULE

comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 21st day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS.

01. Commercial Fishing. Fishing for, taking, or transporting fish or crustacea for the purpose of selling, bartering, exchanging, offering or exposing for sale. (7-1-93)

02. Commercial Fish Species. Except as permitted by the Director of the Department of Fish and Game under Subsection 100.03 of this rule, only the following fish species may be taken for commercial purposes: (4-6-05)

- ~~a.~~ ~~Bluehead sucker -- *Catostomus discobolus*.~~ (~~7-1-93~~)
- ~~ba.~~ Bridgelip sucker -- *Catostomus columbianus*. (7-1-93)
- ~~eb.~~ Common ~~C~~carp -- *Cyprinus carpio*. (~~7-1-93~~)()
- ~~dc.~~ Chiselmouth -- ~~A~~*crocheilus alutaceus*. (~~7-1-93~~)()
- ~~ed.~~ Fathead minnow -- *Pimephales promelas*. (7-1-93)
- ~~fe.~~ Goldfish -- *Carassius auratus*. (7-1-93)
- ~~f.~~ Lake trout -- *Salvelinus namaycush*. ()
- ~~g.~~ Lake whitefish -- *Coregonus clupeaformis*. ()
- ~~g.~~ ~~Lake chub -- *Couesius plumbeus*.~~ (~~7-1-93~~)
- ~~h.~~ Largescale sucker -- *Catostomus macrochæilus*. (~~7-1-93~~)()
- ~~i.~~ ~~Leatherside chub -- *Gila copei*.~~ (~~7-1-93~~)
- ~~j.~~ ~~Leopard dace -- *Rhinichthys falcatus*.~~ (~~7-1-93~~)
- ~~ki.~~ Longnose dace -- *Rhinichthys cataractae*. (7-1-93)
- ~~li.~~ Mountain sucker -- *Catostomus platyrhynchus*. (7-1-93)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing Commercial Fishing

Docket No. 13-0112-0701
PENDING RULE

- ~~mk.~~ Northern ~~squawfish~~ pikeminnow -- *Ptychocheilus oregonensis*. (7-1-93)()
- ~~ol.~~ Peamouth -- *Mylocheilus caurinus*. (7-1-93)
- ~~pm.~~ Redside shiner -- *Richardsonius balteatus*. (7-1-93)
- ~~qn.~~ Speckled dace -- *Rhinichthys osculus*. (7-1-93)
- ~~ro.~~ Tench -- *Tinca tinca*. (7-1-93)
- ~~sp.~~ Tui chub -- *Gila bicolor*. (7-1-93)
- ~~tq.~~ Utah chub -- *Gila atraria*. (7-1-93)
- ~~ur.~~ Utah sucker -- *Catostomus ardens*. (7-1-93)
- ~~v.~~ ~~Lake trout~~ -- *Salvelinus namaycush*. (4-6-05)

03. Commercial Crustacea Species. Except as permitted by the Director of the Department of Fish and Game under Subsection 100.03, only the Crayfish - species of the genus *Pacifastacus*, may be taken for commercial purposes. (7-1-93)

(BREAK IN CONTINUITY OF SECTIONS)

500. COMMERCIAL GEAR AND METHODS OF TAKE FOR FISH OR CRUSTACEA. Fish or crustacea may be commercially harvested ONLY with the following gear and methods: (7-1-93)

- 01. With Seine Nets.** However, all seine nets must be either: (7-1-93)
- a.** Under constant attendance by the licensee or someone working under the supervision of the licensee; or (7-1-93)
- b.** If being used to hold fish, clearly marked with buoys that are at least twelve (12) inches in diameter. (7-1-93)

02. With Crayfish or Minnow Traps, Not Exceeding Three Feet in Any Dimension. However, all crayfish and minnow traps must be lifted and emptied of catch at least once every ninety-six (96) hours except during periods of weather that pose a threat to human life, health or safety. (7-1-93)

03. Experimental Gear. With experimental gear approved by the Director pursuant to Subsection 100.02. (7-1-93)

04. By Hand. For crayfish ONLY, by hand. (7-1-93)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing Commercial Fishing

Docket No. 13-0112-0701
PENDING RULE

- 05. Trawl Nets.** With trawl nets as approved by the Director. (7-1-93)
- 06. Conventional Rod and Reel Fishing Tackle.** Only methods approved for sportfishing, as described in IDAPA 13.01.11, "Rules Governing Fish," are permitted, except that the holder of a commercial license may use more than two (2) lines while commercially fishing. (4-6-05)
- 07. Gill Nets.** With gill nets, as approved by the Director under such conditions as he may deem appropriate. However: ()
- a.** All gill nets and lines within ten (10) feet of the surface must be clearly marked with a minimum of six (6) inch diameter buoys every fifty (50) feet. ()
- b.** All gill nets must be lifted and emptied of catch at least once every eighteen (18) hours except during periods of weather that pose a threat to human life, health or safety. ()
- c.** If gill net catches include excessive numbers of game fish species, licenses can be revoked, or harvest limited or suspended, as determined by the Director. ()

(BREAK IN CONTINUITY OF SECTIONS)

700. COMMERCIAL FISHING AREAS.

Commercial harvest is allowed only in the following areas: (7-1-93)

- 01. For Seine Nets.** Seine nets with a mesh greater than one and one half (1 1/2") square may be used ONLY in the following waters, except as approved by the Director for other waters on an experimental basis pursuant to Subsection 100.03.b.: (7-1-93)
- a.** Snake River and main stem impoundments from Hells Canyon Dam upstream to the confluence of the North and South Forks. (7-1-93)
- b.** Ashton Reservoir. (7-1-93)
- c.** Palisades Reservoir. (7-1-93)
- d.** Lake Lowell. (7-1-93)
- e.** Black Canyon Reservoir. (7-1-93)
- f.** Blackfoot Reservoir. (7-1-93)
- g.** Mud Lake. (7-1-93)
- h.** Bear River and main stem impoundments from Utah state line upstream to and

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Rules Governing Commercial Fishing

Docket No. 13-0112-0701
PENDING RULE

including Alexander Reservoir. (7-1-93)

02. Minnow Traps. Minnow traps for commercial fish may be ONLY used in the following areas, except as approved by the Director for other waters on an experimental basis pursuant to Subsection 100.03.b. (7-1-93)

a. Snake River excluding main stem impoundments from Weiser upstream to the confluence of the North and South Forks. (7-1-93)

b. Ashton Reservoir. (7-1-93)

c. Palisades Reservoir. (7-1-93)

d. Black Canyon Reservoir. (7-1-93)

e. Blackfoot Reservoir. (7-1-93)

f. Mud Lake. (7-1-93)

g. Bear River and main stem impoundments from Utah state line upstream to and including Alexander Reservoir. (7-1-93)

03. Crayfish Traps. Crayfish traps for commercial crustacea may be used ONLY in the following areas, except as approved by the Director for other waters on an experimental basis pursuant to Subsection 100.03.b.: (7-1-93)

a. Snake River and main stem impoundments from Hells Canyon Dam upstream to the confluence of the North and South Forks. (7-1-93)

b. Black Canyon Reservoir. (7-1-93)

c. Blackfoot Reservoir. (7-1-93)

d. Mud Lake. (7-1-93)

e. Bear River and main stem impoundments from Utah state line upstream to and including Alexander Reservoir. (7-1-93)

04. Rod and Reel for Lake Trout Only. (4-6-05)

a. Lake Pend Orielle. (4-6-05)

05. Gill Nets. Gill nets for commercial fish may only be used in waters as approved by the Director and where commercial nongame species are likely to exceed eighty percent (80%) of the fish biomass. ()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 13 - IDAHO FISH AND GAME COMMISSION

13.01.17 - RULES GOVERNING THE USE OF BAIT FOR TAKING BIG GAME ANIMALS

DOCKET NO. 13-0117-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

Clarify the definition of allowable bait to be consistent with the trapping rules.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 300 and 301.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Brad Compton (208) 287-2756.

DATED this 13th day of November, 2007.

W. Dallas Burkhalter
Deputy Attorney General
Natural Resources Division/Fish and Game
600 S. Walnut
P.O. Box 25
Boise, Idaho 83707

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION
Use of Bait for Taking Big Game Animals

Docket No. 13-0117-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE TEMPORARY AND PROPOSED RULE

EFFECTIVE DATE: The effective date of the temporary rule is **January 22, 2007.**

AUTHORITY: In compliance with Sections 67-5221(1) and 67-5226, Idaho Code, notice is hereby given that this agency has adopted a temporary rule, and proposed rulemaking procedures have been initiated. The action is authorized pursuant to Sections 36-104(b) and 36-1101, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule and a nontechnical explanation of the substance and purpose of the proposed rulemaking:

Clarify the definition of allowable bait to be consistent with the trapping rules.

TEMPORARY RULE JUSTIFICATION: Pursuant to Section(s) 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The temporary rule confers a benefit to outfitters and hunters.

FEE SUMMARY: Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because of the need to comply with printing schedules for the 2007 hunting seasons.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the temporary and proposed rule, contact Brad Compton (208) 287-2756.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION Use of Bait for Taking Big Game Animals

Docket No. 13-0117-0701
PENDING RULE

Anyone may submit written comments regarding the proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 21st day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

100. USE OF BAIT.

Bait is defined as any substance placed to attract big game animals, except liquid scent for deer and elk. Bait may be used to hunt ONLY black bear and ONLY under the following conditions. (7-9-93)

01. Time. (7-1-93)

a. No bait may be placed for the purpose of attracting or taking black bear prior to the opening of black bear take season EXCEPT in that portion of Unit 12 north of State Highway 12 southwest of the Doe Creek Road (Forest Service Road 566) and northeast of Cabin Creek and Forest Service Road 486, and bait may be placed one (1) week prior to the opening of bear season in Units 17, 19, 20, 20A, 26 and 27. (4-11-06)

b. All bait containers and materials must be removed and all excavations refilled no later than seven (7) days after the close of the spring and fall black bear seasons. (3-20-97)

02. Location. (7-1-93)

a. No bait site may be located within two hundred (200) feet of any water (lake, pond, reservoir, year round free flowing spring and year round free flowing stream), or within two hundred (200) yards from any maintained trail or any road. (3-30-01)

b. No bait site may be located within one-half (1/2) mile of any designated campground or picnic area, administrative site, or dwelling. (7-1-93)

03. Types. (7-1-93)

a. ~~No parts of or whole game animals, game birds, or game fish may be used as bait.~~
No person shall use any part of a domestic or wild origin game bird, game animal, game fish, or protected nongame wildlife for bait or scent. (7-1-93)()

b. The skin must be removed from any mammal parts or carcasses used as bait. (7-1-93)

04. Containers. (7-1-93)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAHO FISH AND GAME COMMISSION
Use of Bait for Taking Big Game Animals

Docket No. 13-0117-0701
PENDING RULE

a. No bait may be contained within paper, plastic, glass, metal, wood or other nonbiodegradable materials, except that a single, metal container with a maximum size of fifty-five (55) gallons may be used if securely attached at the bait site. (7-1-93)

b. No bait may be contained in any excavated hole greater than four (4) feet in diameter. (7-1-93)

05. Establishment of Bait Sites. (7-1-93)

a. Any structures constructed at bait sites using nails, spikes, ropes, screws, or other materials must be removed by the permit holder within seven (7) days of the close of the spring and fall black bear seasons. (3-20-97)

b. All bait sites must be visibly marked at the nearest tree or on the bait container using a tag supplied by the Department. (7-1-93)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 20 - DEPARTMENT OF LANDS

20.02.06 - ADMINISTRATION OF IDAHO'S REFORESTATION LAW

DOCKET NO. 20-0206-0701 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section §§ 58-104(6) and 58-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

During the 1995 legislative session, the Legislature enacted Senate Bill 1088, repealing Chapter 2, Title 38, Idaho Code, the "Reforestation Law".

The purpose of this rulemaking is to repeal the Idaho Department of Lands' (IDL) IDAPA 20.02.06 "Administration of Idaho's Reforestation Law", the regulatory framework for the Reforestation Law that was repealed during the 1995 legislative session. The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2007, Idaho Administrative Bulletin, Vol. 07-10, page 37. No public comments were received during the public comment period which ended October 24, 2007.

FISCAL IMPACT: There will be no financial impact due to the repeal of this Rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ronald A. Litz, Assistant Director, Forestry & Fire, Telephone number 208-334-0200.

DATED this 15th day of November, 2007.

Ronald A. Litz
Division Administrator, Forestry & Fire
954 W Jefferson, Boise, Idaho 83720-0050
(208)334-0200/ Fax No. (208)334-3698
rlitz@idl.idaho.gov

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF LANDS
Administration of Idaho's Reforestation Law

Docket No. 20-0206-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before October 17, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

During the 1995 legislative session, the Legislature enacted Senate Bill 1088, repealing Chapter 2, Title 38, Idaho Code, the "Reforestation Law."

The purpose of this rulemaking is to repeal the Idaho Department of Lands (IDL) IDAPA 20.02.06 "Administration of Idaho's Reforestation Law," the regulatory framework for the Reforestation law that was repealed during the 1995 legislative session.

After consideration of public comments, IDL intends to present the final proposal to the State Board of Land Commissioners at their November 15, 2007 meeting for adoption of a pending rule. The repeal is expected to be final and effective upon the conclusion of the 2008 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about IDL's programs and activities, visit IDL's web site at <http://www.idl.idaho.gov>.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. IDL will consider all written comments received by the undersigned on or before October 24, 2007.

DATED this 24th day of September, 2007.

IDAPA 20.02.06 IS BEING REPEALED IN ITS ENTIRETY.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 20 - DEPARTMENT OF LANDS

20.02.12 - RULES OF THE COMMUNITY AND URBAN FORESTRY TRUST ACCOUNT

DOCKET NO. 20-0212-0701 (CHAPTER REPEAL)

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session, unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Sections 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section §§ 58-104(6) and 58-105, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The purpose of this rulemaking is to repeal the Idaho Department of Lands (IDL) IDAPA 20.02.12 "Rules of the Community and Urban Forestry Trust Account" because the statutory authority provides the necessary direction to manage this account.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in the October 3, 2007, Idaho Administrative Bulletin, Vol. 07-10, page 38. No public comments were received during the public comment period which ended October 24, 2007.

FISCAL IMPACT: There will be no financial impact due to the repeal of this Rule.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Ronald A. Litz, Assistant Director, Forestry & Fire, Telephone number 208-334-0200.

DATED this 15th day of November, 2007.

Ronald A. Litz
Division Administrator, Forestry & Fire
954 W Jefferson, Boise, Idaho 83720-0050
(208)334-0200/ Fax No. (208)334-3698
rlitz@idl.idaho.gov

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF LANDS
Community and Urban Forestry Trust Account

Docket No. 20-0212-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Sections 58-104(6) and 58-105, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before October 17, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The following is a nontechnical explanation of the substance and purpose of the proposed rulemaking:

The purpose of this rulemaking is to repeal the Idaho Department of Lands (IDL) IDAPA 20.02.12, "Rules of the Community and Urban Forestry Trust Account," because the statutory authority contained in Section 38-136, Idaho Code, provides the necessary direction to manage this account.

After consideration of public comments, IDL intends to present the final proposal to the State Board of Land Commissioners at their November 15, 2007 meeting for adoption of a pending rule. The repeal is expected to be final and effective upon the conclusion of the 2008 session of the Idaho Legislature.

NEGOTIATED RULEMAKING: Due to the nature of this rulemaking, negotiations were not held.

GENERAL INFORMATION: For more information about IDL's programs and activities, visit IDL's web site at <http://www.idl.idaho.gov>.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning this rulemaking, contact the undersigned.

Anyone may submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. IDL will consider all written comments received by the undersigned on or before October 24, 2007.

DATED this 24th day of September, 2007.

IDAPA 20.02.12 IS BEING REPEALED IN ITS ENTIRETY.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.20 - RULES GOVERNING THE ADMINISTRATION OF PARK AND RECREATION AREAS AND FACILITIES

DOCKET NO. 26-0120-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-4249, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

The pending rule is being adopted as proposed. The complete text of the proposed rule was published in Book 2 of the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 184 and 185.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:
N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this pending rule, contact Dean Sangrey, 208-514-2260, dsangrey@idpr.idaho.gov.

DATED this 26th day of November, 2007.

Dean Sangrey
Division Administrator, Operations
Idaho Department of Parks and Recreation
5657 Warm Springs Ave.
Boise, ID 83716
PO Box 83720
Boise, ID 83720-0065
Phone: 208-334-4199
FAX 208-334-3741

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Administration of Park and Recreation Areas and Facilities

Docket No. 26-0120-0701

PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4249, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

This proposed rule addresses several issues pertaining to the operation of state parks and protection of the natural resources of the state. An addition to the definition of the capacity of a campsite is recommended to provide that a family unit can include one vehicle or RV, or two motorcycles, and up to two tents. An increasing number of park visitors come to our facilities to pursue non-traditional recreational activities, such as model airplane operations, geo-caching, gold panning, and metal detecting, etc. We need to establish appropriate guidance for park staff so they can effectively manage these activities for the benefit of the visitor and the natural resources of the park. With regard to protection of our historical, cultural and natural resources, we are experiencing an increasing number of requests to spread human ashes on lands owned by the Parks Department. This rule change will provide the necessary guidance for staff to appropriately respond to requests, and will also establish acceptable parameters for approving this activity.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session if requested.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dean Sangrey, 208-514-2260, dsangrey@idpr.idaho.gov.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Administration of Park and Recreation Areas and Facilities

Docket No. 26-0120-0701

PENDING RULE

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 28th day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

010. DEFINITIONS.

As used in this chapter: (1-1-94)

01. ADA Campsites and Facilities. (3-30-06)

a. ADA Designated Campsites. A reservable ADA campsite may only be reserved and occupied by a party that can provide proof of disability upon arrival. If not reserved after 6:00 p.m. and no other non-ADA designated sites of the same site type are available, the site would be available for one (1) night. (3-30-06)

b. ADA Accessible Facilities. IDPR offers some facilities that provide for ADA accessibility. These facilities are not managed exclusively for ADA use. (3-30-06)

02. Board. The Idaho Park and Recreation Board, a bipartisan, six (6) member Board, appointed by the Governor. (3-13-97)

03. Camping Unit. A camping unit is the combined equipment and people capacity that a site or facility will accommodate. (3-30-06)

a. Campsites. Maximum capacity limits on each campsite are subject to each site's design and size. Unless otherwise specified, the maximum capacity will be one (1) family unit or a party of no more than eight (8) persons, one (1) vehicle or RV or two (2) motorcycles, and up to two (2) tents, provided the combined equipment and people fit within the designated camping area of the site selected. ~~(3-30-06)~~(____)

b. Facilities. Maximum capacity limits on each facility are subject to each facility's design and size. The combined equipment and people occupying a facility must fit within the designated areas of the facility selected. (3-30-06)

(BREAK IN CONTINUITY OF SECTIONS)

401. OPERATIONAL GUIDELINES FOR NON-TRADITIONAL RECREATIONAL ACTIVITIES.

Non-traditional recreational activities such as model airplane/glider operations, geo-caching, gold

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF PARKS AND RECREATION

Docket No. 26-0120-0701

Administration of Park and Recreation Areas and Facilities

PENDING RULE

panning and metal detecting may be authorized by the Park Manager or his designee, if such activities do not interfere with traditional uses of the park and are consistent with preservation of park resources. ()

~~4042.~~ -- 449. (RESERVED).

(BREAK IN CONTINUITY OF SECTIONS)

576. PROTECTION OF HISTORICAL, CULTURAL AND NATURAL RESOURCES.

The digging, destruction or removal of historical, cultural or natural resources is prohibited. Collection for scientific and educational purposes will be through written permission of the park manager or designee only. (3-30-06)

01. Spreading of Human Ashes. Human ashes may be spread on lands owned by the Idaho Department of Parks and Recreation. The exact location must be pre-approved by the Park Manager or designee. Ashes may not be spread in the water within a state park. ()

02. Land-Use Restrictions. The spreading of human ashes will not restrict the use of Department land from future development. The Department does not assign or convey any rights or restrictions by allowing the placement of ashes on the land, and there are no restrictions in the ability of the landowner to operate, develop, or otherwise use the land at their sole discretion without any obligation associated with the placement of ashes on the land. ()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 26 - DEPARTMENT OF PARKS AND RECREATION

26.01.30 - IDAHO SAFE BOATING RULES

DOCKET NO. 26-0130-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the agency and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule becomes final and effective at the conclusion of the legislative session unless the rule is approved, rejected, amended or modified by concurrent resolution in accordance with Section 67-5224 and 67-5291, Idaho Code. If the pending rule is approved, amended or modified by concurrent resolution, the rule becomes final and effective upon adoption of the concurrent resolution or upon the date specified in the concurrent resolution.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that this agency has adopted a pending rule. The action is authorized pursuant to Section 67-4249, Idaho Code.

DESCRIPTIVE SUMMARY: The following is a concise explanatory statement of the reasons for adopting the pending rule and a statement of any change between the text of the proposed rule and the text of the pending rule with an explanation of the reasons for the change.

As a result of testimony received during public hearings conducted relative to this pending rule, Idaho Safe Boating Rule 525.04 has been changed to reflect these recommendations.

The text of the pending rule has been amended in accordance with Section 67-5227, Idaho Code. Only those sections that have changes that differ from the proposed text are printed in this bulletin. The complete text of the proposed rule was published in the October 3, 2007 Idaho Administrative Bulletin, Vol. 07-10, pages 186 and 187.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning the pending rule, contact Dean Sangrey, 208-514-2260, dsangrey@idpr.idaho.gov.

DATED this 26th day of November, 2007.

Dean Sangrey, Division Administrator, Operations
Idaho Department of Parks and Recreation
5657 Warm Springs Ave., Boise, ID 83716
PO Box 83720, Boise, ID 83720-0065
Phone: 208-334-4199 / FAX 208-334-3741

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF PARKS AND RECREATION
Idaho Safe Boating Rule

Docket No. 26-0130-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221, Idaho Code, notice is hereby given that this agency has initiated proposed rulemaking procedures. The action is authorized pursuant to Section 67-4249, Idaho Code.

PUBLIC HEARING SCHEDULE: Public hearing(s) concerning this rulemaking will be scheduled if requested in writing by twenty-five (25) persons, a political subdivision, or an agency, not later than October 17, 2007.

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made not later than five (5) days prior to the hearing, to the agency address below.

DESCRIPTIVE SUMMARY: The following is a non-technical explanation of the substance and purpose of the proposed rulemaking:

In accordance with the provisions of the Idaho Safe Boating Act, it is critical that the Department of Parks and Recreation rules be amended to address concerns with regard to negligent operation of a vessel. This proposed amendment addresses unsafe seating while the vessel is underway, and the unsafe operation of a vessel in close proximity to a person in the water.

FEE SUMMARY: The following is a specific description of the fee or charge imposed or increased: N/A

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year resulting from this rulemaking: N/A

NEGOTIATED RULEMAKING: Pursuant to IDAPA 04.11.01.811, negotiated rulemaking was not conducted because it was determined there was insufficient time from the formal approval of the proposed rules by the Idaho Park and Recreation Board. Public meetings will be scheduled prior to the upcoming legislative session if requested.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on technical questions concerning the proposed rule, contact Dean Sangrey, 208-514-2260, dsangrey@idpr.idaho.gov.

Anyone may submit written comments regarding this proposed rulemaking. All written comments must be directed to the undersigned and must be delivered on or before October 24, 2007.

DATED this 28th day of August, 2007.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF PARKS AND RECREATION
Idaho Safe Boating Rule

Docket No. 26-0130-0701
PENDING RULE

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

525. NEGLIGENCE OPERATION.

Negligent operation, as used in Section 67-7017, Idaho Code, shall include, but not be limited to, the following: (1-1-94)

01. **Airborne.** Becoming airborne or completely leaving the water while crossing the wake of another vessel at an unsafe distance from the vessel creating the wake; or (3-23-98)

02. **Weaving.** Weaving through congested traffic; or (3-23-98)

03. **Speed or Proximity.** Operating at such a speed and proximity to another vessel, a person, or property of other persons so as to require the operator to swerve at the last moment to avoid collision; or ~~(3-23-98)~~()

04. **Unsafe Seating While Underway.** Operating a motorboat while a person sits, stands, or kneels on the bow deck, gunwales, transom, or any other areas not designed by the manufacturer for passengers, while the vessel is underway at a speed greater than no wake or five (5) miles per hour, except when immediately necessary for safe and reasonable navigation or operation or for the purpose of engaging in or assisting persons being towed in an otherwise lawful manner; or ()

05. **Unsafe Operation - Person in Vicinity of Vessel.** Operating a motorboat, or engaging the engine of an idle motorboat, when someone is occupying the water in a manner or in proximity to the vessel's propulsion and/or exhaust so as to create a safety hazard. ()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.04 - RULES FOR ADMINISTRATION OF WASTEWATER TREATMENT FACILITY GRANTS

DOCKET NO. 58-0104-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 136 through 153.

The proposed rule has been revised at Sections 000, 001, 004, 006, 007, 020, 030, 040, 041, 042, and 050 in response to public comment and for consistency and clarification. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/wastewater_grants/58_0104_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." Therefore, this rule does regulate an activity not regulated by the federal government.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208) 373-0439.

Dated this 11th day of October, 2007.

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418 / Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking, as announced in the Notice of Negotiated Rulemaking published on May 2, 2007, is to revise IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants" (Grant Rules), for consistency with the environmental review of IDAPA 58.01.12, "Rules for Administration of Water Pollution Control Loans," (Loan Rules), Section 042. The two sets of rules have different requirements for environmental information document preparation and there is no need for the difference. The current structure of the Grant Rules requires that the grant applicant prepare an environmental information document of a uniform scope, regardless of the need for mitigation. Compliance with the Grant Rules adds a burden to both the applicant and DEQ when a project qualifies for a categorical exclusion. An efficiency would be achieved by adopting the process used for wastewater facility loans, in which categorical exclusions are specifically allowed with a lower level of effort. Section 042 of the Loan Rules will be used as a model for the environmental review process for grants.

In addition, this proposed rule contains revisions which were not included in the scope of the Notice of Negotiated Rulemaking. The majority of these revisions were suggested or requested by members of the negotiating group during the meeting held on May 17, 2007. These revisions include the removal of references to construction and other obsolete language, revising definitions and rule text for consistency with other DEQ rules, and cleaning up outdated language.

Cities, counties, districts and associations that own and operate wastewater treatment facilities may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY**Docket No. 58-0104-0701****Rules for Administration of Wastewater Treatment Facility Grants****PENDING RULE**

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE SECTION 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." Therefore, the proposed rule does regulate an activity not regulated by the federal government but is not broader in scope or more stringent than federal law.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 61, and a preliminary draft rule was made available for public review. One meeting was held on May 17, 2007. Several members of the public attended the meeting and the discussion resulted in revisions to the preliminary draft rule, some of which are beyond the scope of the May 2, 2007 Notice of Negotiated Rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208) 373-0439.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007.

Dated this 29th day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

000. LEGAL AUTHORITY.

The Idaho ~~State~~ Board of Environmental Quality, pursuant to authority granted in Chapters 1 and Chapter 36, Title 39, Idaho Code, ~~did~~ adopted the following rules for the administration of a Wastewater Treatment Facility Grants Program in Idaho. (5-3-03)(____)

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Idaho Department of Environmental Quality Rules, IDAPA 58.01.04, "Rules for Administration of Wastewater Treatment Facility Grants." (5-3-03)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program for

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

providing financial assistance to qualifying entities ~~for the construction of wastewater treatment facilities~~ to prepare an engineering report or facility plan. (3-15-85)()

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706. (5-3-03)

003. ADMINISTRATIVE APPEALS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." ()

0034. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. (5-3-03)()

02. Availability of Referenced Material. The "Wastewater Facilities Loan Handbook of Procedures" (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. ()

005. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." ()

0046. POLICY.

It is the policy of the Idaho Board of Environmental Quality through the Department of Environmental Quality to administer the Wastewater Treatment Facility Grant Program for the purpose of protecting and enhancing the quality and value of the water resources of the state of Idaho by financially assisting in the prevention, control and abatement of water pollution. It is also the intent of the Board to assign a priority rating to those projects which will most significantly improve the quality of the waters of the state and most adequately protect the public health. (5-3-03)

0057. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (12-31-91)

01. Applicant. Any qualifying entity making application for wastewater treatment facility grant funds. (5-3-03)

02. Board. The Idaho ~~State~~ Board of Environmental Quality. (12-31-91)()

03. Categorical Exclusion (CE). Category of actions which do not individually or

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Docket No. 58-0104-0701

Rules for Administration of Wastewater Treatment Facility Grants

PENDING RULE

cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental ~~assessment~~ information document nor an environmental impact statement is required. (5-3-03)()

04. Collector Sewer. That portion of the wastewater treatment facility whose primary purpose is to receive sewage from individual residences and other individual public or private structures and which is intended to convey wastewater to an interceptor sewer or a treatment plant. (3-15-85)

~~**05. Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of wastewater treatment facilities, including preliminary planning to determine the economic and engineering feasibility of wastewater treatment facilities, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, other action necessary in the construction of wastewater treatment facilities, the inspection and supervision of the construction, and start-up of the associated facilities.~~ (5-3-03)

065. Department. The Idaho Department of Environmental Quality. (1-3-78)

076. Director. The Director of the Idaho Department of Environmental Quality or ~~his/~~ her the Director's designee. (5-3-03)()

087. Domestic Wastewater. Wastewater derived from public or private residences, business buildings or institutions and similar establishments and which contains water and human body wastes, specifically excreta and urine, along with such products designed to come in contact with excreta and urine in the practice of personal hygiene. (3-15-85)

~~**098. Eligible Costs.** Costs which are necessary for planning, and/or designing and/or constructing~~ wastewater treatment facilities. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)()

~~**2509. Preliminary Engineering Report.** An engineering report which compares that addresses specific portions of the system(s) as they are being contemplated for design. These reports address specific purpose and scope, design requirements, a comparison of wastewater treatment facility alternatives solutions and identifies the most cost effective, and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook.~~ (10-6-88)()

~~**140. Environmental Impact Statement (EIS).** A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook~~ applicant when the Department determines that the proposed ~~drinking~~ wastewater ~~construction~~ project will significantly affect the environment ~~as described in Appendix C of the Handbook~~. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The Environmental Review Procedures

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS.

(5-3-03)()

101. Environmental Information Document (EID). Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed wastewater ~~construction~~ project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted.

(5-3-03)()

12. Facility Plan. A plan that describes the overall system, including the collection system, the treatment system, and the disposal system. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the systems, including upgrades and additions. The plan also includes a ~~Systematic evaluation by a professional engineer~~ of feasible ~~treatment~~ alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook.

(5-3-03)()

13. Finding of No Significant Impact (FONSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental ~~assessment information document~~ or a summary of it and shall note any other environmental documents related to it.

(5-3-03)()

14. Handbook. "Wastewater Facilities Loan Handbook of Procedures." (5-3-03)

15. Ineligible Costs. Costs which are described in Subsection 041.065. (5-3-03)()

16. Interceptor Sewer. That portion of the wastewater treatment facility whose primary purpose is to transport domestic sewage or nondomestic wastewater from collector sewers to a treatment plant. (3-15-85)

17. Municipality. ~~Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.~~

(5-3-03)

187. National Pollutant Discharge Elimination System. Point source permitting program established pursuant to Section 402 of the federal Clean Water Act (33 U.S.C. Section 1342). (5-3-03)

198. Nondomestic Wastewater. Wastewaters originating primarily from industrial or commercial processes which carry little or no pollutants of human origin. (1-1-82)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

~~2019.~~ O & M Manual. A guidance and training manual delineating the optimum operation and maintenance of the wastewater treatment facility or its components. (10-6-88)

~~21. Phasing.~~ ~~One (1) portion of a design or construction project needed to complete the total eligible project. Each phase may be made up of several engineering or construction contracts.~~ (1-1-82)

~~22. Plan of Operation.~~ ~~A schedule of specific actions and completion dates for construction, start-up, operator training and operation of the wastewater treatment facility.~~ (10-6-88)

20. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). ()

231. Point Source. Any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants are, or may be discharged. This term does not include return flows from irrigated agriculture, discharges from dams and hydroelectric generating facilities or any source or activity considered a nonpoint source by definition. (5-3-03)

242. Pollutant. Any chemical, biological, or physical substance whether it be solid, liquid, gas, or a quality thereof, which if released into the environment can, by itself or in combination with other substances, create a nuisance or render that environment harmful, detrimental, or injurious to public health, safety or welfare or to domestic, commercial, industrial, recreational, aesthetic or other beneficial uses. (3-15-85)

263. Priority List. A list of proposed projects rated by severity as described in Section 020. (5-3-03)

274. Qualifying Entity. Any county, city, special service district, nonprofit corporation, or other governmental entity, or a combination thereof, having authority to collect, treat or dispose of wastewater; ~~municipality.~~ (1-1-87)()

285. Rehabilitation. The repair or replacement of limited segments of interceptor or collector sewers. (1-3-78)

296. Reserve Capacity. That portion of the treatment works that is designed and incorporated in the constructed facilities to handle future sewage flows and loadings. (1-1-82)

3027. Sewer Use Ordinance/Sewer Use Resolution. An ordinance ~~adopted pursuant to Title 42, Chapter 32, Idaho Code, or other applicable law~~ or resolution which requires new sewers and connections to be properly designed and constructed, prohibits extraneous sources of inflow and prohibits introduction of wastes into the sewer in an amount that endangers the public safety or the physical or operational integrity of the wastewater treatment facility. (10-6-88)()

3128. State. The state of Idaho. (3-15-85)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

~~32. **Supplemental Grant.** A grant awarded to a municipality in conjunction with a loan from the wastewater facility loan program. (5-3-03)~~

~~329. **Suspension.** An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (10-6-88)~~

~~340. **Termination.** An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (10-6-88)~~

~~351. **Treatment Plant.** That portion of the wastewater treatment facility whose primary purpose is to remove pollutants from domestic and nondomestic wastewater. (3-15-85)~~

~~362. **User Charge System.** A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, and which provides sufficient reserves and/or revenues for debt retirement, ~~and~~ operation, and maintenance, and replacement of the wastewater treatment facility. (10-6-88)()~~

~~373. **Wastewater.** A combination of the liquid and water-carried wastes from dwellings, commercial buildings, industrial plants, institutions and other establishments, together with any groundwater, surface water and storm water that may be present; liquid and water that is physically, chemically, biologically, or rationally identifiable as containing excreta, urine, pollutants or domestic or commercial wastes; sewage. (3-15-85)~~

~~384. **Wastewater Treatment Facility.** Any facility, including land, equipment, furnishings and appurtenances thereof, for the purpose of collecting, treating, neutralizing or stabilizing wastewater and removing pollutants from wastewater including the treatment plant, collectors, interceptors, outfall and outlet sewers, pumping stations, sludge treatment and handling systems and land disposal systems. (10-6-88)~~

~~006.—009. (RESERVED).~~

~~010. **FINANCIAL AND MANAGEMENT CAPABILITY ANALYSIS.**~~

~~No grants shall be awarded for the design and construction phases of projects unless the applicant has demonstrated that it has the legal, institutional, managerial, and financial capability to insure construction, operation and maintenance, including equipment replacement, of the proposed wastewater treatment facility, and including the qualifying entity's share of the cost of the project. (5-3-03)~~

~~01. **Information Needed.** The applicant must submit legal, institutional, managerial and financial information on a form prescribed by the Department. (5-3-03)~~

~~02. **Incorporated Nonprofit Applicants.** To fully meet the requirements of Subsection 010.01, incorporated nonprofit applicants must demonstrate that all of the following items are included in its Articles of Incorporation and/or Bylaws: (5-3-03)~~

~~a. The corporation is nonprofit and incorporated according to Title 30, Chapter 3,~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

~~Idaho Code.~~

~~(5-3-03)~~

~~b. Membership in the corporation is limited to property owners only, with one (1) vote per lot or parcel.~~ ~~(5-3-03)~~

~~c. Voting rights are restricted to corporation members with improved property, except that a developer will have voting rights until the corporation becomes self-sustaining.~~ ~~(5-3-03)~~

~~d. Corporation membership is not eliminated by cancellation of voting rights.~~ ~~(5-3-03)~~

~~e. The purpose of the corporation is clearly defined.~~ ~~(5-3-03)~~

~~f. Funds generated to operate one (1) function of a multipurpose corporation, i.e., one (1) providing both water and sewer services, will be used for that designated purpose and not transferred or commingled for another function.~~ ~~(5-3-03)~~

~~g. The corporation owns the system it intends to maintain.~~ ~~(5-3-03)~~

~~h. Mutually agreeable access to a system owned by the corporation is provided by the property owners.~~ ~~(5-3-03)~~

~~i. Membership and share, if any, in the corporation is tied to land ownership such that successive owners must acquire the preceding owner's membership, or voting shares, if any.~~ ~~(5-3-03)~~

~~j. New members in the corporation are provided copies of the Articles of Incorporation, Bylaws and covenants and contracts of the corporation.~~ ~~(5-3-03)~~

~~k. No provision(s) restricts ownership of improved property.~~ ~~(5-3-03)~~

~~l. The corporation is capable of raising revenue by fixing and collecting user charges.~~ ~~(5-3-03)~~

~~m. The Board of Directors of the corporation has authority to raise revenue for emergency operation and maintenance without a majority vote of the membership.~~ ~~(5-3-03)~~

~~n. The corporation is capable of suing and of being sued, and will maintain the capability to impose liens on the real property of those members (shareholders) who become delinquent in user charges and further has the capability to suspend services, providing such suspension will not jeopardize use by other members.~~ ~~(5-3-03)~~

~~o. Operation and maintenance functions of the corporation are identified in a manual for that purpose that is or will be approved by the Department. No changes can be made to the manual without consent by the Department.~~ ~~(5-3-03)~~

~~p. The conditions for dissolution of the corporation are specified in the Declaration of Covenants. Dissolution is limited to connection to municipal facilities or merger with another~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

~~approved nonprofit entity having financial and management capability for the merged system.~~

~~(5-3-03)~~

~~g. Except as provided in Subsection 010.02.p., the corporation cannot discontinue operation or dispose of the sewage treatment plant without prior Department approval.~~

~~(5-3-03)~~

~~h. A third entity is identified to execute the specified operation and maintenance function(s) in the event the operating corporation is incapable of performance.~~

~~(5-3-03)~~

~~i. The corporation is able to plan and control how and at what time additional service functions will be extended or added.~~

~~(5-3-03)~~

~~j. If the Articles of Incorporation and/or Bylaws provide for proxy voting, such proxies will not be binding on a new purchaser of the property.~~

~~(5-3-03)~~

~~k. Developers will contribute to the operation and maintenance functions until such time as the nonprofit corporation is self-sustaining. Consider either a specified period or when a specified number of lots or parcels have been sold.~~

~~(5-3-03)~~

~~l. The corporation has defined service area boundaries.~~

~~(5-3-03)~~

~~03. **Cost Allocation.** An applicant proposing to construct wastewater treatment facilities designed to serve two (2) or more qualifying entities must show how the costs will be allocated among the participating entities. Such applicants must provide an executed intermunicipal service agreement which, at a minimum, incorporates the following information:~~

~~(5-3-03)~~

~~a. The basis upon which the costs are allocated; and~~

~~(3-15-85)~~

~~b. The formula by which the costs are allocated; and~~

~~(3-15-85)~~

~~c. The manner in which the cost allocation system will be administered.~~

~~(3-15-85)~~

~~04. **Waiver.** The requirement in Subsection 010.03 may be waived by the Department if the applicant can demonstrate:~~

~~(12-31-91)~~

~~a. Such an agreement is already in place; or~~

~~(3-15-85)~~

~~b. There is documentation of a service relationship in the absence of a formal agreement; or~~

~~(3-15-85)~~

~~c. The entity providing wastewater treatment exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying wastewater fails to participate.~~

~~(3-15-85)~~

~~0408. -- 019. (RESERVED).~~

020. PRIORITY RATING SYSTEM.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. ~~Limited~~ ~~Grant~~ funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health and water quality criteria.

(~~5-3-03~~)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance in accordance with these rules. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system wherein each succeeding prevention, control or abatement need is weighted less heavily than the preceding need. Priority criteria, listed herein in descending numerical weight, shall contain the following points: (3-15-85)

a. Public health emergency certified by the ~~Department~~ Idaho Board of Environmental Quality or by a District Board of Health - fifty (50) points. (~~10-6-88~~)()

b. Documented public health hazard identified by a District ~~Boards of Health~~ Department or the Department - fifteen (15) points. (~~3-15-85~~)()

c. Special resource water protection needs documented by the Department for waters identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, ~~Section 102,~~ "Water Quality Standards" - fifteen (15) points. (~~12-31-91~~)()

d. Potential public health hazard and/or water quality impact: (1-1-87)

i. Potential public health hazard which is suspected but may not be documented by District Boards of Health or the Department three (3) or five (5) or seven (7) points. (3-15-85)

ii. Potential water quality impacts other than public health which may affect the intended use of surface or groundwaters as identified in Idaho Department of Environmental Quality Rules, IDAPA 58.01.02, "Water Quality Standards" - three (3) or five (5) or seven (7) points. (3-15-85)

e. The points in Subsections 020.02.d.i. and 020.02.d.ii. shall be selected based on the proportion of the population in contact with the pollutant, or the quantity of wastewater discharged in relation to the volume of the receiving water, or the relation of the pollutant quantity to other pollutant sources. (12-31-91)

03. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval. (5-3-03)

04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-15-85)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

05. Priority Target Date. A qualifying entity whose project is on the approved list will be contacted by the Department and a target date for submission of a completed grant application will be established. (5-3-03)

06. Project Bypass. A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project(s) that are ready to proceed. A ~~municipality~~ qualifying entity that is bypassed will be notified in writing of the reasons for being bypassed. (3-15-85)()

021. -- 029. (RESERVED).

030. PROJECT FUNDING.

Grant funds awarded under this program will be used entirely to prepare an engineering report or facility plan which identifies the cost effective and environmentally sound wastewater system alternative to achieve or maintain compliance with IDAPA 58.01.16, "Wastewater Rules," and the federal Clean Water Act, 33 U.S.C. Sections 1251 et seq., and which is approvable by the Department. ()

01. ~~Project Step Funding.~~ Projects may be funded in four (4) steps: Engineering Report or Facility Plan. (5-3-03)()

a. ~~Step 1. Facilities planning, which will include:~~ The engineering report or facility plan shall be certified by an Idaho licensed professional engineer. The engineering report or facility plan shall include, as a minimum, the following: (3-15-85)()

i. ~~Preliminary engineering report prepared by an engineer licensed in the state of Idaho and on a form prescribed by the Department; or~~ Description of existing conditions for the proposed project area; (3-15-85)()

ii. ~~Facility plan prepared in accordance with the Handbook.~~ Description of future conditions for the proposed project area; (5-3-03)()

iii. Development and initial screening of alternatives; ()

iv. Final screening of principal alternatives and plan adoption; ()

v. Selected plan description and implementation arrangements; ()

vi. Relevant engineering data supporting the final alternative; and ()

vii. Level of environmental review specified by the Department as described in Section 042. ()

b. ~~Step 2. Design and specifications, which includes the preparation of the detailed plans and specifications necessary for the bidding and construction of the project.~~ The engineering report or facility plan must be reviewed and approved by the Department.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701
PENDING RULE

(1-3-78)()

c. ~~Step 3. Construction, which includes bidding and actual construction of the project.~~ The planning period shall be twenty (20) years for all facilities except for conveyance systems which may be forty (40) years. (1-3-78)()

d. ~~Step 4. A combination of Step 2 and Step 3.~~ At least one (1) public hearing shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The cost effective and environmentally sound alternative selected shall be based in part on public comments received from intended users affected by the proposed project. (3-15-85)()

02. ~~Combination Step Funding.~~ Projects may be funded in any combination of the steps in Subsection 030.01 with the approval of the Department. **Limitation on Funding Assistance.** The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (12-31-91)()

03. ~~Cost Effective Requirement.~~ Step 2, Step 3 or Step 4 grants will not be awarded until a final cost effective environmentally sound alternative has been selected by the Step 1 facility plan or preliminary engineering report as approved by the Department. The most cost effective alternative may be selected based on the comment received from at least one (1) public hearing attended by intended users within the jurisdiction of the qualifying agency and conducted in accordance with state law. (5-3-03)

04. ~~Supplemental Grants.~~ In conjunction with loans provided to municipalities from the wastewater facility loan program, the Department may award supplemental grants in the following manners: (5-3-03)

a. ~~Planning and design projects may receive up to ninety percent (90%) funding of eligible costs; and~~ (10-6-88)

b. ~~Construction projects may receive up to ninety percent (90%) funding of eligible costs that exceed the amount a loan recipient is able to pay as determined by the Department's published guidelines.~~ (10-6-88)

05. ~~Funding for Reserve Capacity.~~ Funding for reserve capacity of a treatment plant will not exceed a twenty (20) year population growth and funding for reserve capacity of an interceptor will not exceed a forty (40) year population growth as determined by the Department. (3-15-85)

06. ~~Nondomestic Capacity Limitation.~~ Grant funds, including supplemental grant funds, shall not be awarded for construction of treatment capacity for any single nondomestic source which is determined to be: (10-6-88)

a. ~~Contributing ten percent (10%) or more of the organic or hydraulic loading of the sewage treatment works; or~~ (1-1-82)

b. ~~If the source requires installation of special treatment processes that add an increment of ten percent (10%) or more to the capital costs of the sewage treatment works; and~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

(1-1-82)

~~e. Any nondomestic source discharge exceeding the provisions in Subsections 030.06.a. and 030.06.b. shall be required to purchase the entire portion of their needed treatment capacity.~~ (5-3-03)

~~08. Eligible and Ineligible Project Costs for Supplemental Grants. Eligible and ineligible costs for supplemental grants are delineated in Idaho Department of Environmental Quality Rules, IDAPA 58.01.12, "Rules for Administration of Wastewater Treatment Facility Loans."~~ (10-6-88)

031. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS.

Pre-grant engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with Subsection 050.05.d. (5-3-03)

032. -- 039. (RESERVED).

040. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form as prescribed by the Department. (5-3-03)

02. Application Requirements. Applications shall contain the following documentation as applicable: (5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)

b. Contracts for engineering services or other technical services, and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041. (5-3-03)

c. ~~Step 1 Facility Planning~~ Engineering Report or Facility Plan. Plan of study describing the work tasks to be performed in the ~~Preliminary e~~Engineering report or facility plan, a schedule for completion of the work tasks and an estimate of man hours and costs to complete the work tasks. (10-6-88)(____)

d. ~~Step 2 Design or Step 4 Design and Construction:~~ (3-15-85)(____)

i. ~~Preliminary e~~Engineering report or facility plan; and (3-15-85)(____)

ii. Intermunicipal service agreements between all qualifying entities within the scope of the project, if applicable; and (3-15-85)

e. ~~Step 3 Construction:~~ (3-15-85)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Docket No. 58-0104-0701

Rules for Administration of Wastewater Treatment Facility Grants

PENDING RULE

- ~~i. Documented evidence of all needed easements and land acquisition; and (5-3-03)~~
 - ~~ii. Biddable plans and specifications of the approved wastewater treatment facility alternative; and (3-15-85)~~
 - ~~iii. A plan of operation and project schedule; and (3-15-85)~~
 - ~~iv. A user charge, sewer use ordinance and financial management system; and (3-15-85)~~
 - ~~v. A staffing plan and budget. (3-15-85)~~
 - ~~f. Step 4 Design and Construction. Application grantees must submit all documentation specified in Subsection 040.02.e. prior to advertising for bids on construction contracts. (5-3-03)~~
 - ge.** Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)
 - i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)
 - ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)
 - iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)
 - iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application. (5-3-03)
 - ~~hf.~~ A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041. (5-3-03)
 - ~~ig.~~ A demonstration that the obligation to pay the costs for which funding is requested, is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, ~~50-341~~ 59-1026, and 42-3212, Idaho Code. (5-3-03)()
 - ~~jh.~~ A statement regarding how the non-grant portion of the project will be funded. (5-3-03)
- 03. Determination of Completeness of Application.** Applications will be reviewed to determine whether they contain all of the information required by Subsection 040.02. (5-3-03)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

~~04. **Phasing of Project.** Project phasing will be allowed through agreement between the municipality and the Department or as may be required by availability of funds. (1-1-82)~~

054. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

065. Reapplication for Grant. The action of disapproving, recalling or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when project deficiencies are resolved and project readiness is secured, provided the applicant remains on the approved priority list. (10-6-88)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary for planning, ~~or designing and/or constructing~~ wastewater treatment facilities; (5-3-03)()

b. Reasonable; and (5-3-03)

c. Costs that are not ineligible as described in Subsection 041.065. (5-3-03)()

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning, the facility plan or ~~preliminary~~ engineering report for design ~~and construction~~ of wastewater treatment facilities, and any other relevant information in the application that describes the scope of the project to be funded. (5-3-03)()

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections ~~67-2801 et seq., 67-2320, 50-341~~ 59-1026, and 42-3212, Idaho Code. (5-3-03)()

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses ~~of local government~~ such as salaries and expenses of a mayor, city council members or a city attorney; (5-3-03)()

~~b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

- ~~eb.~~ Contracts for ~~P~~professional and consulting services ~~utilizing a lumpsum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract;~~
(5-3-03)(____)
- ~~ec.~~ Planning directly related to the water pollution control projects; (5-3-03)
- ~~ed.~~ Sewer system evaluations; (5-3-03)
- ~~fe.~~ Financial and management capability analysis; (5-3-03)
- ~~gf.~~ Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)
- ~~h.~~ ~~Landscaping;~~ (5-3-03)
- ~~i.~~ ~~Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay;~~ (5-3-03)
- ~~j.~~ ~~Material acquired, consumed, or expended specifically for the project;~~ (5-3-03)
- ~~k.~~ ~~A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations;~~ (5-3-03)
- ~~l.~~ ~~Preparation of an operation and maintenance manual;~~ (5-3-03)
- ~~m.~~ ~~Preparation of a plan of operation;~~ (5-3-03)
- ~~n.~~ ~~Start-up services;~~ (5-3-03)
- ~~o.~~ ~~Project identification signs;~~ (5-3-03)
- ~~pg.~~ Public participation for alternative selection; (5-3-03)
- ~~qh.~~ Development of user charge and financial management systems; (5-3-03)
- ~~ri.~~ Development of sewer use ordinance or resolution; (5-3-03)(____)
- ~~sj.~~ Staffing plans and budget development; (5-3-03)
- ~~tk.~~ Certain direct and other costs as determined eligible by the Department; (5-3-03)
- ~~ul.~~ Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)
- ~~vm.~~ Costs of complying with the ~~F~~ederal Water Pollution Control Act (P.L. 92-500) as amended Clean Water Act, 33 U.S.C Sections 1251 et seq., loan requirements applied to specific projects; and (5-3-03)(____)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

~~wn.~~ Site acquisition ~~costs, including sewer right of way, sewage treatment plant site, sanitation landfills and sludge disposal areas~~ services which could include legal fees, appraisals and surveys for land associated with the cost-effective alternative in the report and for land for purchase through future State Revolving Fund loan funding. (5-3-03)()

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

a. Basin or area wide planning not directly related to the project; (5-3-03)

~~b.~~ ~~Bonus payments not legally required for completion of construction before a contractual completion date;~~ (5-3-03)

~~eb.~~ Personal injury compensation or damages arising out of the project; (5-3-03)

~~dc.~~ Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)

~~ed.~~ Costs outside the scope of the approved project; (5-3-03)

~~fe.~~ Ordinary operating expenses ~~of local government,~~ such as salaries and expenses of a mayor, city council members, ~~or city attorney, or district personnel costs and acquiring project funding; and~~ (5-3-03)()

~~g.~~ ~~Construction of privately owned wastewater treatment facilities;~~ (5-3-03)

~~h.~~ ~~Cost of land in excess of that needed for the proposed project.~~ (5-3-03)

~~if.~~ Cost of refinancing existing indebtedness. (5-3-03)

06. Notification Regarding Eligible Costs. Prior to providing a grant offer, the Department shall notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Grant Offer. The grant offer shall reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set, ~~such as construction costs.~~ Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)()

042. ENVIRONMENTAL REVIEW.

01. ~~Overview of Process~~ Environmental Documentation. The applicant ~~will~~ shall complete an environmental ~~information document (EID)~~ review as part of and in conjunction with an engineering report or a facility plan. ~~The review will be done in accordance with~~ Guidance on

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

how to complete an environmental review may be found in Chapter 5 of the Handbook. The applicant shall ~~also~~ consult with the Department at an early stage in the preparation of the engineering report or facility plan to determine the required level of environmental review. ~~The environmental information document (EID) will include, as a minimum, the following~~ Based on review of existing information and assessment of environmental impacts, the applicant shall complete one of the following, per the Department's instruction: (5-3-03)()

a. ~~Description of purpose and need for proposed action~~ Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (5-3-03)()

b. ~~Description of the proposed alternative, including the proposed action~~ Prepare an Environmental Information Document (EID) in a format specified by the Department; or (5-3-03)()

c. ~~Description of the affected environment;~~ Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (5-3-03)()

~~d. Discussion of the environmental impacts of the proposed action;~~ (5-3-03)

~~e. The means to mitigate adverse environmental impacts;~~ (5-3-03)

~~f. Description of public participation process;~~ (5-3-03)

~~g. List of referenced documents;~~ (5-3-03)

~~h. List of agencies consulted; and~~ (5-3-03)

~~i. Mailing list of interested parties.~~ (5-3-03)

02. ~~Department Action. Based on review of the environmental information document (EID), the Department shall take one (1) of the following actions~~ **Categorical Exclusion.** If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (5-3-03)()

a. ~~Issue a Categorical Exclusion (CE) with supporting documentation~~ Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department shall publish a notice of CE in a local newspaper, following which the engineering report or facility plan can be approved; or (5-3-03)()

b. ~~Issue a Finding of No Significant Impact (FNSI). The Department shall first issue a draft FNSI and allow a thirty (30) day public comment period before making its final decision regarding significant impacts; or~~ Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department shall notify the applicant of the need to prepare an EID. (5-3-03)()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

~~e. Require the grantee to prepare an environmental impact statement (EIS). An EIS must be prepared when the Department determines the project will significantly affect the environment. A draft EIS must first be prepared and submitted to the Department. The applicant must also arrange for a thirty (30) day public comment period and a public hearing regarding the EIS. A final EIS following the public comment period must be submitted to the Department for approval.~~ (5-3-03)

03. Environmental Information Document Requirements. When an EID is required, the applicant shall prepare the EID in accordance with the following Department procedures: ()

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. ()

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. ()

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or draft a "finding of no significant impact" (FONSI). ()

04. Final Finding of No Significant Impact. The Department shall publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department shall assess the effectiveness and feasibility of mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the engineering report or facility plan. ()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: ()

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; ()

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; ()

c. Conduct a public hearing which may be in conjunction with an engineering report or facility plan hearing; and ()

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. ()

06. Final EIS. Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Docket No. 58-0104-0701

Rules for Administration of Wastewater Treatment Facility Grants

PENDING RULE

decision, documenting the mitigative measures which shall be required of the applicant. The engineering report or facility plan can be completed once the final EIS has been approved by the Department. ()

037. Use of Environmental Reviews ~~Prepared~~ Conducted by Other Agencies. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, ~~it~~ at its discretion, issue its own determination by adopting the document and public notification process of the other agency. (5-3-03)()

048. Validity of Review. Environmental reviews are valid for five (5) years. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public comments and shall: (5-3-03)

a. Reaffirm the earlier decision; or (5-3-03)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (5-3-03)

043. -- 049. (RESERVED).

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered to successful applicants by representatives of the Department or by registered mail. (3-15-85)

02. Acceptance of Grant Offer. Applicants have ~~thirty~~ sixty (360) days in which to officially accept the grant offer on prescribed forms furnished by the State. The ~~thirty~~ sixty (360) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the ~~thirty~~ sixty (360) day period the grant funds may be offered to the next project of priority. (3-15-85)()

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grantee, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grantee has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grantee vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. (3-15-85)

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of the project. Some eligible costs may be estimated and the grant payments may be increased or decreased as provided in Section 060. (5-3-03)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to: (3-15-85)

a. Terms consistent with this chapter and consistent with the Step covered by the grant offer; and (12-31-91)

b. Special clauses as determined necessary by the Department for the successful investigation, design, ~~construction~~ and management of the project; and (~~3-15-85~~)()

c. Terms consistent with applicable state and federal laws pertaining to engineering reports or facility plans, and design ~~and construction~~; and (~~3-15-85~~)()

d. Requirement for the prime engineering firm(s) ~~and their principals~~ retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. (~~5-3-03~~)()

e. The project documents shall be ~~bid, contracted and constructed according to~~ in accordance with the current edition of Idaho Standards for Public Works Construction (ISPWC) unless the grantee otherwise has approved and adopted acceptable public works construction standards approved by the Department. (~~5-3-03~~)()

051. -- 059. (RESERVED).

060. PAYMENTS.

01. Payments for State Grants. Requests for payment will be submitted to the Department on a form provided by the Department. The Department will pay for those costs that are determined to be eligible. (5-3-03)

02. Limitations on Advance Payments. Advanced payment will not be made on a project unless a written request from the grantee for a waiver is approved by the Board. (10-6-88)

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-15-85)

04. Increases for Bid Underestimates. Increases for bid underestimates may be considered for grant increase; however, errors of omission or engineering consultant errors will not be considered. (10-6-88)

05. Grant Decreases. If the actual eligible cost is determined to be lower than the

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

estimated eligible cost the grant amount will be reduced proportionately. (3-15-85)

06. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grantee may be reviewed by the Department. ~~The review may be deferred until the review of the design/construction loan is performed.~~ (5-3-03)()

07. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the project review has been completed or deferred, or after final inspection, if the grant provides funding for construction, final approval of the engineering, or completion of the environmental review process ~~and final project review have been completed or deferred.~~ (5-3-03)()

061. -- 079. (RESERVED).

080. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including its engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (5-3-03)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-15-85)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-6-85)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-15-85)

d. Any willful or serious failure to perform within the scope of the project, ~~plan of operation and project schedule, terms of architectural/engineering subagreements, or contracts for construction;~~ or (3-15-85)()

e. Debarment of a contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-15-85)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-15-85)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-15-85)

b. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Rules for Administration of Wastewater Treatment Facility Grants

Docket No. 58-0104-0701

PENDING RULE

Quality.” (3-15-02)

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” (3-15-02)

04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the causes(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant. (3-15-85)

05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated. (3-15-85)

081. WAIVERS.

Waivers from the requirements of these rules may be granted by the Department on a case-by-case basis upon full demonstration by the entity requesting the waiver that: (10-6-88)

01. Public Health Hazard. A significant public health hazard exists; or (10-6-88)

02. Groundwater Contamination. A significant groundwater contamination problem exists; or (10-6-88)

03. Point Source Pollution. A significant point source of pollution exists, causing a violation of the Idaho Department of Environmental Quality rules, ~~for IDAPA 58.01.02, “Water Quality Standards,” and wastewater treatment requirements; or~~ (10-6-88)()

~~**04. Affordability Criteria.** The project will exceed affordability criteria, acceptable to the Department, in the event that the waiver is not granted.~~ (10-6-88)

082. -- 9959. (RESERVED).

~~996. ADMINISTRATIVE APPEALS.~~

~~Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.”~~ (5-3-03)

~~997. CONFIDENTIALITY.~~

~~Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.”~~ (3-15-02)

~~998. INCLUSIVE GENDER.~~

~~As used in these rules, the masculine, feminine, or neuter gender, and the singular or plural number, will each be deemed to include the others whenever the context so requires.~~ (3-15-85)

~~999. SEVERABILITY.~~

~~Idaho Department of Environmental Quality Rules, IDAPA 58.01.04, “Rules for Administration of Wastewater Facility Grants,” are severable. If any rule, or part thereof, or the application of such rule to any person or circumstance, is declared invalid, that invalidity does not affect the validity of any remaining portion of the chapter.~~ (1-3-78)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.07 - RULES REGULATING UNDERGROUND STORAGE TANK SYSTEMS

DOCKET NO. 58-0107-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 88, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, September 5, 2007, Vol. 07-9, pages 310 through 321. After consideration of public comments, the rule has been revised at Sections 001, 004, 010, 100, 300, 400, 500, and 600. The remainder of the rule has adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/ust/58_0107_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Orville Green at orville.green@deq.idaho.gov, (208)373-0278 or Rick Jarvis at rick.jarvis@deq.idaho.gov, (208)373-0247.

Dated this 15th day of November, 2007.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Chapters 1 and 88, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: A public hearing concerning this proposed rulemaking will be held as follows:

October 2, 2007 at 3:30 p.m.
Department of Environmental Quality
Conference Room B
1410 N. Hilton, Boise, Idaho

The hearing site(s) will be accessible to persons with disabilities. Requests for accommodation must be made no later than five (5) days prior to the hearing. For arrangements, contact the undersigned at (208) 373-0418.

DESCRIPTIVE SUMMARY: Under House Bill 33, the 2007 Idaho Legislature enacted the Idaho Underground Storage Tank Act, Chapter 88, Title 39, Idaho Code, which implements the federal Underground Storage Tank Compliance Act of 2005. DEQ has been directed by the Idaho Legislature to promulgate rules necessary to regulate underground storage tank (UST) systems in the state of Idaho. This proposed rule includes the following:

- 1. Incorporation by reference of 40 CFR Part 280, Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, except that references to hazardous substances are expressly excluded from incorporation by reference;**
- 2. Inspection and certification of petroleum USTs;**
- 3. Owner and operator training;**
- 4. Release prevention, detection, compliance and enforcement;**
- 5. Delivery prohibitions;**
- 6. Additional measures to protect ground water, such as secondary containment for new or replacement petroleum UST systems or connecting pipes; and**
- 7. Development of a database system for petroleum UST information status.**

Cities, counties, bankers, lenders, realtors, petroleum marketers, consultants, representatives of the Idaho Petroleum Storage Tank Fund Board of Trustees, and citizens of the state of Idaho may be interested in commenting on this proposed rule. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in November 2007 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2008 legislative session if adopted by the Board and approved by the Legislature.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year:

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

N/A

IDAHO CODE 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. On July 4, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-7, page 89, and a preliminary draft rule was made available for public review. One meeting was held on July 19, 2007. Several members of the public attended the meeting and submitted written comments which resulted in revisions to the preliminary draft rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact Orville Green at orville.green@deq.idaho.gov, (208)373-0278 or Rick Jarvis at rick.jarvis@deq.idaho.gov, (208)373-0247.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before October 3, 2007.

Dated this 3rd day of August, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

IDAPA 58 TITLE 01 CHAPTER 07

58.01.07 - RULES REGULATING UNDERGROUND STORAGE TANK SYSTEMS

000. LEGAL AUTHORITY.

Chapters 1 and 88, Title 39, Idaho Code, grant authority to the Board of Environmental Quality to promulgate rules for the regulation of underground storage tank systems within the state of Idaho.
()

001. TITLE AND SCOPE.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

01. Title. These rules shall be cited as IDAPA 58.01.07, “Rules Regulating Underground Storage Tank Systems.” ()

02. Scope. These rules establish standards and procedures necessary for the regulation of underground storage tank systems. Compliance with these rules shall not relieve persons from the obligation to comply with other applicable state or federal laws. ()

002. WRITTEN INTERPRETATIONS.

As described in Section 67-5201(19)(b)(iv), Idaho Code, the Department of Environmental Quality may have written statements which pertain to the interpretation of these rules. If available, such written statements can be inspected and copied at cost at the Department of Environmental Quality, 1410 N. Hilton, Boise, Idaho 83706-1255. ()

003. ADMINISTRATIVE PROVISIONS.

Persons may be entitled to appeal agency actions authorized under these rules pursuant to IDAPA 58.01.23, “Rules of Administrative Procedure Before the Board of Environmental Quality.” ()

004. INCORPORATION BY REFERENCE.

Any reference to any document identified in Subsection 004.01 shall constitute the full adoption by reference into IDAPA 58.01.07. ()

01. Documents Incorporated by Reference. Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks, 40 CFR Part 280, revised as of July 1, 2007. ()

02. Hazardous Substance Underground Storage Tank Systems. ()

a. The following items *only apply to hazardous substance underground storage tank systems and do not apply to petroleum underground storage tank systems*: ()

i. The definition of “Hazardous substance UST system” in 40 CFR 280.12 and use of this term or regulations regarding hazardous substance in 40 CFR Part 280; and ()

ii. 40 CFR 280.42 and any reference to 40 CFR 280.42 in 40 CFR Part 280. ()

b. *All other provisions of 40 CFR Part 280 and all provisions of IDAPA 58.01.07 shall apply to hazardous substance underground storage tank systems.* ()

03. Consistency. In the event of conflict or inconsistency between the language in IDAPA 58.01.07 and that found in 40 CFR Part 280, IDAPA 58.01.07 shall prevail. ()

04. Stringency. IDAPA 58.01.07 shall be no more stringent than federal law or regulations governing underground storage tank systems. ()

05. Availability of Referenced Material. The federal regulations adopted by reference can be obtained at the following locations: ()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

- a. U.S. Government Printing Office, <http://www.gpoaccess.gov/index.html>; and ()
- b. Department of Environmental Quality, Hearing Coordinator, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. ()

005. OFFICE HOURS -- MAILING ADDRESS AND STREET ADDRESS.

The state office of the Department of Environmental Quality and the office of the Board of Environmental Quality are located at 1410 N. Hilton, Boise, Idaho 83706-1255, (208) 373-0502, www.deq.idaho.gov. The office hours are 8 a.m. to 5 p.m. Monday through Friday. ()

006. CONFIDENTIALITY OF RECORDS.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality." ()

007. -- 009. (RESERVED).

010. DEFINITIONS.

For the purpose of the rules contained in IDAPA 58.01.07, "Rules Regulating Underground Storage Tank Systems," the following definitions apply: ()

01. **Board.** The Idaho Board of Environmental Quality. ()
02. **Community Water System.** A public water system that serves at least fifteen (15) service connections used by year-round residents of the area served by the system or regularly serves at least twenty-five (25) year-round residents. ()
03. **Department.** The Idaho Department of Environmental Quality. ()
04. **Director.** The Director of the Idaho Department of Environmental Quality or his authorized agent. ()
05. **Existing.** *Solely for purposes of determining when secondary containment is required, existing is when a petroleum underground storage tank, piping, motor fuel dispensing system, facility, public water system or potable drinking water well is in place when a new installation or replacement of a tank, piping, or motor fuel dispensing system begins.* ()
06. **EPA.** The United States Environmental Protection Agency. ()
07. **Installation of a New Motor Fuel Dispenser System.** The installation of a new motor fuel dispenser and the equipment necessary to connect the dispenser to the petroleum underground storage tank system. This equipment may include flexible connectors, risers, or other transitional components that are beneath the dispenser, below the shear valve, and connect the dispenser to the piping. It does not mean the installation of a motor fuel dispenser installed separately from the equipment needed to connect the dispenser to the petroleum underground storage tank system. ()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

08. Installer. Any person who installs a new or replacement petroleum underground storage tank system. ()

09. Motor Fuel. Petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of petroleum-blended gasohol, and is typically used in the operation of a motor engine. This includes blended petroleum motor fuels such as biodiesel and ethanol petroleum blends. ()

10. New Underground Storage Tank. Has the same meaning as “underground storage tank or UST” in 40 CFR 280.12, except that such term includes tanks that have been previously used and meet the requirements of 40 CFR 280.20(a). ()

11. Non-Community Water System. A public water system that is not a community water system. A non-community water system is either a transient non-community water system or a non-transient non-community water system. ()

12. Person. An individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. “Person” also includes a consortium, a joint venture, a commercial entity, and the United States government. ()

13. Piping. A hollow cylinder or a tubular conduit constructed of non-earthen materials that routinely contains and conveys regulated petroleum substances from the petroleum underground storage tank(s) to the dispenser(s) or other end-use equipment. It does not mean vent, vapor recovery, or fill lines that do not routinely contain regulated petroleum substances. ()

14. Potable Drinking Water Well. Any hole (dug, driven, drilled, or bored) that extends into the earth until it meets ground water which supplies water for a non-community public water system or otherwise supplies water for household use (consisting of drinking, bathing, and cooking, or other similar uses). Such wells may provide water to entities such as a single-family residence, group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities. ()

15. Product Deliverer. Any person who delivers or deposits product into a petroleum underground storage tank. This term may include major oil companies, jobbers, petroleum transportation companies, or other product delivery entities. ()

16. Public Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and, any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “non-community water system.” ()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

17. Red Tag. A tamper-resistant tag, device, or mechanism attached to the tank's fill pipes that clearly identifies a petroleum underground storage tank as ineligible for product delivery. The tag or device shall be visible to the product deliverer and shall clearly state that it is unlawful to deliver to, deposit into, or accept product into the ineligible petroleum underground storage tank. ()

18. Repair. *Solely for purposes of determining when secondary containment is required,* as it applies to petroleum underground storage tanks, piping, and motor fuel dispensers systems, repair means any activity that does not meet the definition of replace. ()

19. Replace. As it applies to petroleum underground storage tanks and piping, replace is defined as follows: ()

a. Petroleum Underground Storage Tank. Replace means to remove an existing tank and install a new tank. ()

b. Piping. Replace means to remove and put back in one hundred (100) percent of the piping, excluding connectors, connected to a single petroleum underground storage tank system. This definition does not alter the requirement in 40 CFR 280.33(c) to replace metal pipe sections and fittings that have released product as a result of corrosion or other damage. A replacement of metal pipe section and fittings pursuant to 40 CFR 280.33(c) shall be considered a replacement under this definition only if one hundred (100) percent of the metal piping, excluding connectors, is replaced. ()

20. Secondary Containment. A release detection and prevention system that meets the requirements of 40 CFR 280.43(g). The piping shall have an inner and outer barrier and a method of monitoring the space between the inner and outer barriers for a leak or release. ()

21. Under-Dispenser Spill Containment. Containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or ground water. Such containment must: ()

a. At installation or modification, be liquid-tight on its sides, bottom, and at any penetrations; *and* ()

b. Be compatible with the substance conveyed by the piping; *and either* ()

c. Allow for visual inspection and access to the components in the containment system; or ()

d. Be monitored for releases *using a release detection method* that meets the requirements of 40 CFR 280.43(g). ()

011. – 099. (RESERVED).

100. ADDITIONAL MEASURES TO PROTECT GROUND WATER FROM CONTAMINATION.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

- 01. Notification.** An owner, operator or designee must: ()
- a.** Provide written notice to the Department thirty (30) days prior to the installation of a new piping system or a new or replacement petroleum underground storage tank. ()
- b.** Provide notice to the Department twenty-four (24) hours prior to the installation of a replacement piping system. ()
- 02. Notification Forms.** The written notice required in Subsection 100.01.a. shall be made upon forms provided by the Department. ()
- 03. Requirements for Petroleum UST Systems.** Owners, operators, and installers of a new or replacement petroleum underground storage tank or piping system shall comply with the following requirements. ()
- a.** Each new petroleum underground storage tank, or piping connected to any such new tank, installed after February 23, 2007, or any existing petroleum underground storage tank, or existing piping connected to such existing tank, that is replaced after February 23, 2007, shall have secondary containment and be monitored for leaks if the new or replaced petroleum underground storage tank or piping is within one thousand (1,000) feet of any existing public water system or any existing potable drinking water well. *At a minimum, secondary containment systems must be designed, constructed, and installed to contain regulated substances released from the tank system until they are detected and removed, prevent the release of regulated substances to the environment at any time during the operational life of the petroleum underground storage tank system, and be checked for evidence of a release at least every thirty (30) days.* The following conditions are excluded: ()
- i.** Suction piping that meets the requirements of 40 CFR 280.41(b)(2)(i) *through* (v); ()
- ii.** Piping that manifolds two (2) or more petroleum underground storage tanks together; ()
- iii.** Existing piping to which new piping is connected to install a dispenser; *and* ()
- iv.** Tanks identified in 40 CFR 280.10(b). ()
- b.** If the owner installs, within one (1) year, a potable drinking water well at the new facility that is within one thousand (1,000) feet of the petroleum underground tanks, piping, or motor fuel dispenser system as part of the new underground storage tank facility installation, secondary containment and under-dispenser containment are required, regardless of whether the well is installed before or after the petroleum underground tanks, piping, and motor fuel dispenser system are installed. ()
- c.** The notice required in Subsection 100.01 shall indicate whether the new or replacement installation is within one thousand (1,000) feet of an existing public water system or any existing potable drinking water well. If the owner and installer certify that the installation is

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

not within one thousand (1,000) feet of an existing public water system or any existing potable drinking water well, the owner, operator or designee shall provide and maintain documentation showing that a reasonable investigation of water systems and drinking water wells was undertaken. A reasonable investigation includes, but is not limited to, a search of the records of:

()

i. The public or private water service provider in the area which the new or replacement installation is located (if any); ()

ii. The city or county in which the new or replacement installation is located; ()

iii. The Idaho Department of Water Resources; and ()

iv. The Idaho Department of Environmental Quality. ()

d. In the case of a replacement of an existing petroleum underground storage tank or existing piping connected to the petroleum underground storage tank, Section 100 shall apply only to the specific petroleum underground storage tank or piping being replaced, not to other petroleum underground storage tanks and connected pipes comprising such system. ()

e. Each installation of a new motor fuel dispenser system shall include under-dispenser spill containment if the new dispenser is within one thousand (1,000) feet of any existing public water system or any existing potable drinking water well. ()

04. Requirements for Hazardous Substance UST Systems. Owners, operators, and installers of a new or replacement hazardous substance underground storage tank or piping system shall have secondary containment as required in 40 CFR 280.42. ()

05. Certification. Owners and operators shall also comply with the certification requirements of 40 CFR 280.22(f) as incorporated by reference into these rules. ()

101. -- 199. (RESERVED).

200. RELEASE REPORTING REQUIREMENTS

01. Information to be Reported. ()

a. In addition to the requirements in IDAPA 58.01.02, "Water Quality Standards," Subsection 851.01, owners or operators shall report the following information regarding confirmed petroleum underground storage tank releases to the Department on forms provided by the Department: ()

i. The release source; and ()

ii. The release cause. ()

b. Releases less than twenty-five (25) gallons that are cleaned up within twenty-four (24) hours, and which do not cause a sheen on nearby surface water, do not need to be reported.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

()

02. Release Sources. Release sources may include, but are not limited to the following: ()

a. Petroleum Underground Storage Tanks; ()

b. Piping; ()

c. Dispensers, which include the dispenser and equipment used to connect the dispenser to the piping. A release from a suction pump or components located above the shear valve would be an example of a release from the dispenser; ()

d. Submersible turbine pump area, which includes the submersible turbine pump head (typically located in the tank sump), the line leak detector, and the piping that connects the submersible turbine pump to the petroleum underground storage tank; and ()

e. Delivery problem, which identifies releases that occurred during product delivery to the petroleum underground storage tank. Typical causes associated with this source are spills and overfills. ()

03. Release Causes. Release causes may include, but are not limited to the following: ()

a. Spills which may occur when the delivery hose is disconnected from the fill pipe of the petroleum underground storage tank or when the nozzle is removed from the vehicle at the dispenser; ()

b. Overfills which may occur from the fill pipe at the petroleum underground storage tank or when the nozzle fails to shut off at the dispenser; ()

c. Physical or mechanical damage of all types except corrosion. Examples include a puncture of the petroleum underground storage tank or piping, loose fittings, broken components, and components that have changed dimension like elongation or swelling; ()

d. Corrosion of a metal tank, piping, flex connector, or other component; and ()

e. Installation problem that occurs specifically because the underground storage tank system was not installed properly. ()

04. Requirements. The reporting required in Section 200 shall be reported to the Department within ninety (90) days of a confirmed release. The reporting requirement in Section 200 shall not relieve owners or operators from the obligation to comply with IDAPA 58.01.02, "Water Quality Standards," Section 851, "Petroleum Release Reporting, Investigation, and Confirmation," and IDAPA 58.01.02, "Water Quality Standards," Section 852, "Petroleum Release Response and Corrective Action." ()

201. -- 299. (RESERVED).

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

300. TRAINING REQUIREMENTS.

01. Requirements. The Department shall *adopt* a training program to help owners and operators comply with the requirements of these rules. The training program requirements shall: ()

a. Be consistent with 42 U.S.C. 6991i(a), as amended by the Underground Storage Tank Compliance Act, (Pub.L. 109-58, title XV, sec. 1524(a), Aug. 8, 2005); ()

b. Be developed in cooperation with petroleum underground storage tank owners and tank operators; ()

c. Take into consideration training programs implemented by petroleum underground storage tank owners and operators as of August 8, 2005; ()

d. Provide for training to be conducted on site or at another mutually convenient location; and ()

e. Be appropriately communicated to petroleum underground storage tank owners and operators. ()

02. Operator Designation. For each petroleum underground storage tank system regulated under these rules, the owner or operator shall: ()

a. Designate: ()

i. The class A operator, who is the individual(s) having primary responsibility for on-site operation and maintenance of the petroleum underground storage tank system. This does not require that the class A operator be on site; ()

ii. The class B operator, who is the individual(s) having daily on-site responsibility for the operation and maintenance of the petroleum underground storage tank system. This does not require that the class B operator be on site at all times; and ()

iii. The class C operator, who is the daily, on-site individual(s) having primary responsibility for addressing emergencies presented by a spill or release from the petroleum underground storage tank system. The class C operator can be designated by the class A or B operator. ()

b. Maintain a record at the facility where the petroleum underground storage tank is located listing each person designated in Subsections 300.02.a.i., 300.02.a.ii., and 300.02.a.iii. ()

c. Notify the Department in writing of the individual(s) designated in Subsections 300.02.a.i. and ii. within thirty (30) days of the designation. ()

03. Training. The owner or operator of each petroleum underground storage tank

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

system regulated under these rules shall ensure that the individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. participate in the training conducted by the Department or a state of Idaho approved third party. ()

a. The individual(s) identified in Subsections 300.02.a.i. or 300.02.a.ii. shall provide training to the persons identified in Subsection 300.02.a.iii. ()

b. The individual(s) identified in Subsection 300.02.a.iii. must be trained before assuming responsibility for responding to emergencies. ()

c. The individual(s) identified in Subsections 300.02.a.i. and 300.02.a.ii. shall repeat the training within thirty (30) days if the petroleum underground storage tank system for which they have responsibility is determined to be out of compliance with these rules. ()

04. Unattended Sites. In the case of unattended sites, a sign must be posted in a location visible from the dispensers indicating emergency shut-off procedures and emergency contact phone numbers. ()

301. -- 399. (RESERVED).

400. INSPECTIONS.

01. Department Authority. In order to fulfill the statutory requirements of Chapter 88, Title 39, Idaho Code, officers, employees or representatives of the Department, or third-party inspectors as described in Subsection 400.02, are authorized to inspect petroleum underground storage tanks, contents of the tanks, and associated equipment and records relating to such tanks, contents, and associated equipment. ()

02. Third-Party Inspections. ()

a. Third-party inspectors must be certified, licensed, or registered by an approved state program to perform on-site inspections. At a minimum, third-party inspectors must meet the requirements listed in Subsections 400.02.a.i. through 400.02.a.v.: ()

i. Be trained in the state-specific inspection protocols and procedures, and perform inspections pursuant to such protocols and procedures; ()

ii. Successfully complete the state's required training program. The training program for third-party inspectors must be comparable to the training program for Department inspectors; ()

iii. Not be the owner or operator of the petroleum underground storage tank, an employee of the owner or operator of the petroleum underground storage tank, or a person having daily on-site responsibility for the operation and maintenance of the petroleum underground storage tank; ()

iv. Use an inspection report form developed by the Department. Review of applicable records and other activities that can be accomplished off-site may be combined with activities

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

conducted at the site to fulfill the on-site inspection requirement; and ()

v. Complete and submit the inspection report to the Department in the manner and time frame established by the Department. *All third-party inspection reports must be submitted electronically to the Department for review and for the Department to make a compliance determination for each site. If requested by the Department, third-party inspectors shall provide all supporting documentation for its inspection reports.* ()

b. Third-party inspection procedures must contain an audit program, developed by the Department, to monitor third-party inspectors on a routine basis. The audit program must include a sufficient number of on-site inspections to effectively assess inspector performance. ()

c. If a third-party inspector fails to demonstrate to the approved state program adequate competence and proficiency to perform petroleum underground storage tank inspections, or the approved state program otherwise determines it is not appropriate for the third-party inspector to conduct on-site inspections as part of a third-party inspection program, the approved state program *must* take appropriate action against the third-party inspector as provided by law. ()

03. Inspections. All inspections shall be done in accordance with the provisions of Section 39-108, Idaho Code. At a minimum, an on-site inspection must assess compliance with the following: ()

a. Notification; ()

b. Corrosion protection; ()

c. Overfill prevention in place and operational; ()

d. Spill prevention in place and operational; ()

e. Tank and piping release detection; ()

f. Reporting suspected releases; ()

g. Records of tank and piping repairs; ()

h. Secondary containment where required; ()

i. Financial responsibility; and ()

j. Temporary closure. ()

401. -- 499. (RESERVED).

500. DELIVERY PROHIBITION.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

01. Prohibition. Effective August 8, 2007, it shall be unlawful for any person to deliver to, deposit into, or accept a regulated petroleum substance into a petroleum underground storage tank at a facility which has been identified by the Department to be ineligible for such delivery, deposit, or acceptance. ()

02. Classification as Ineligible. The Department shall classify a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance as soon as practicable after the Department determines one or more of the following conditions exists: ()

- a. Required spill prevention equipment is not installed; ()
- b. Required overfill protection equipment is not installed; ()
- c. Required leak detection equipment is not installed; or ()
- d. Required corrosion protection equipment is not installed. ()

03. Warning of Violations. The Department may classify a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance if the owner or operator of the tank has been issued a written warning for any of the following violations, and the owner or operator fails to initiate corrective action within thirty (30) days of the issuance of the written warning, unless the deadline is extended by the Department: ()

- a. Failure to properly operate or maintain leak detection equipment; ()
- b. Failure to properly operate or maintain spill, overfill, or corrosion protection equipment; *or* ()
- c. Failure to maintain financial responsibility. ()

04. Service of Notice. If the Department classifies a petroleum underground storage tank as ineligible for delivery, deposit, or acceptance of a regulated petroleum substance pursuant to Subsections 500.02 or 500.03, the Department shall provide a written notice of the determination to the owner or operator prior to prohibiting the delivery, deposit, or acceptance of a regulated petroleum substance. Notice is considered properly served by the Department in any of the following ways: ()

- a. The notice is personally delivered to the owner or operator; or ()
- b. The notice is clearly posted at a public entrance to the facility where the petroleum underground storage tank is located and a copy of the notice is also sent by *certified* mail to the last known address of the owner or operator. ()

05. Red-Tagging. Once service of the written notice of the ineligible determination is complete, the Department shall then attach a red tag to each fill pipe of the ineligible petroleum underground storage tank clearly identifying the tank as ineligible. The Department shall also maintain a list of all petroleum underground storage tanks that are classified as ineligible for

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

delivery, deposit, or acceptance of a regulated petroleum substance. The Department shall make the list available to the public by posting the list on the Department's website at www.deq.idaho.gov. ()

06. Written Notice. The written notice required by Subsection 500.04 must include: ()

a. The specific reasons or violations that led to the ineligible classification; ()

b. A statement notifying the owner and operator that the petroleum underground storage tank is ineligible for delivery and it is unlawful for any person to deliver to, deposit into, or accept a regulated petroleum substance into the petroleum underground storage tank; ()

c. *The effective date the petroleum underground storage tank is deemed ineligible for delivery;* ()

d. The name and address of the department representative to whom a written request for re-inspection can be made, if a re-inspection is necessary; ()

e. A statement regarding the right to appeal the Department's action regarding ineligible classification pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality"; and ()

f. The option to request a compliance conference pursuant to Subsection 500.07. ()

07. Compliance Conference. The owner or operator may request a compliance conference with the Department within fifteen (15) days of receipt of the notice. A compliance conference shall be scheduled within twenty (20) days and conducted in an informal manner by the Department. At the compliance conference, the owner or operator may explain why he believes the petroleum underground storage tank should not be classified as ineligible. *During the compliance conference, the owner or operator and the Department will identify and establish appropriate acts and a time schedule for compliance as necessary.* ()

08. Duration of Ineligible Classification. The classification of a petroleum underground storage tank as ineligible shall remain in effect until the conditions cited in the notice no longer exist. If the Department determines that an ineligible storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated petroleum substance, the Department or an authorized designee shall, as soon as practicable, remove the red tag from the petroleum underground storage tank and also remove the petroleum underground storage tank from the ineligible list posted on its website. *The Department will also send a written notice to the owner and operator that an ineligible storage tank has returned to compliance and is now eligible for delivery, deposit, or acceptance of a regulated petroleum substance.* ()

09. Declining Classification. The Director may decline to classify a petroleum underground storage tank as ineligible if the Director decides that classifying the petroleum underground storage tank as ineligible for delivery, deposit, or acceptance is not in the best interest of the public. ()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules Regulating Underground Storage Tank Systems

Docket No. 58-0107-0701
PENDING RULE

a. The Director may only defer application of delivery prohibition for up to one hundred eighty (180) days after determining a petroleum underground storage tank is ineligible for delivery, deposit, or acceptance of a regulated petroleum substance. ()

b. The Director may authorize the delivery, deposit, or acceptance of product into an ineligible petroleum underground storage tank if such activity is necessary to test or calibrate the underground storage tank or dispenser system. ()

10. Department Authority. Nothing in Section 500 shall affect or preempt the authority of the Department to prohibit the delivery, deposit, or acceptance of a regulated petroleum substance to a petroleum underground storage tank under other existing authorities. ()

11. Proper Notice. A person shall not be in violation of Subsection 500.01 if the Department fails to provide the notice required by Subsections 500.04 and 500.05. ()

12. Unlawful to Tamper with Red Tag. It shall be unlawful for any person to tamper with and/or remove the red tag without the Department's approval. ()

501. -- 599. (RESERVED).

600. PETROLEUM UNDERGROUND STORAGE TANK DATABASE.

01. Maintenance. The Department shall maintain a database which provides details on the status of all petroleum underground storage tanks in the state of Idaho which are subject to regulation. The database shall be updated no less than *the end of each calendar quarter*. ()

02. Identification. The database shall identify any tanks subject to delivery prohibition. ()

03. Petition. Petroleum underground storage tank owners or operators may petition the Department to correct any inaccurate information for their tanks and the Department shall correct any such inaccurate information *within thirty (30) days after verification*. ()

04. Availability. The database shall be available to the public on the Department's website at www.deq.idaho.gov. ()

601. -- 999. (RESERVED).

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.10 - RULES REGULATING THE DISPOSAL OF RADIOACTIVE MATERIALS NOT REGULATED UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

DOCKET NO. 58-0110-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Section 39-4405, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 182 through 185. The agency received no public comments, and the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/haz_waste/58_0110_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: This rule does regulate an activity not regulated by the federal government but is consistent with the legislative directive at Section 39-4405, Idaho Code, and 2001 Idaho Session Laws Chapter 297, Section 1 (H.B. 192, as amended).

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on questions concerning this rulemaking, contact John Brueck at john.brueck@deq.idaho.gov, (208) 373-0458.

Dated this 11th day of October, 2007.

Paula J. Wilson
Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton
Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Disposal of Radioactive Materials Not Regulated by Act of 1954

Docket No. 58-0110-0701

PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. The action is authorized by Section 39-4405, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: DEQ has initiated this rulemaking in response to a Petition for Rulemaking filed by US Ecology Idaho, Inc. In its petition, US Ecology Idaho requested that the Board of Environmental Quality direct DEQ to initiate rulemaking to further limit the types of radioactive materials that are eligible for unrestricted disposal in Idaho by adding a new category of radioactive materials that must be disposed of at a permitted hazardous waste disposal facility. This proposed rule includes the addition of a new category to the definition of Radioactive Material, Subsection 010.10. In addition, the website address for the U.S. Government Printing Office has been added to Subsection 004.03 for availability of federal regulations incorporated by reference. The following groups may be interested in commenting on this proposed rule: Private industry; environmental groups; hazardous and nonhazardous waste disposal facilities; members of the public; and generators of radioactive materials specifically exempted, on a case-by-case basis, from U.S. Nuclear Regulatory Commission regulations contained in 10 CFR 30.11, 10 CFR 40.14, and 10 CFR 70.17.

The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed. After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon the conclusion of the 2008 legislative session if adopted by the Board and approved by the Legislature.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does regulate an activity regulated by the federal government but is consistent with the legislative directive at Section 39-4405, Idaho Code, and 2001 Idaho Sess. Laws Chapter 297 (H.B. 192).

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Docket No. 58-0110-0701

Disposal of Radioactive Materials Not Regulated by Act of 1954

PENDING RULE

Section 67-5220 and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 63, and a preliminary draft rule was made available for public review. One meeting was held on May 22, 2007. Several members of the public attended the meeting and submitted written comments which resulted in revisions to the preliminary draft rule.

ASSISTANCE ON TECHNICAL QUESTIONS, SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning the proposed rulemaking, contact John Brueck, john.brueck@deq.idaho.gov, (208)373-0458.

Anyone can submit written comments by mail, fax or e-mail at the address below regarding this proposed rule. The Department will consider all written comments received by the undersigned on or before August 29, 2007.

DATED this 29th day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

004. INCORPORATION BY REFERENCE.

01. General. Unless expressly provided otherwise, any reference in these rules to any document identified in Subsection 004.02 shall constitute the full adoption by reference, including any notes and appendices therein. The term “documents” includes codes, standards or rules which have been adopted by an agency of the state or of the United States or by any nationally recognized organization or association. (3-15-02)

02. Documents Incorporated by Reference. The following documents are incorporated by reference into these rules: (3-15-02)

- a.** 10 CFR 30.14 through 30.16, revised as of July 1, 2001. (3-15-02)
- b.** 10 CFR 30.18 through 30.21, revised as of July 1, 2001. (3-15-02)
- c.** 10 CFR 32.11, revised as of July 1, 2001. (3-15-02)
- d.** 10 CFR 32.18, revised as of July 1, 2001. (3-15-02)
- e.** 10 CFR 40.13, revised as of July 1, 2001. (3-15-02)

03. Availability of Referenced Material. Copies of the documents incorporated by reference into these rules are available at the following locations: (3-15-02)

- a.** Department of Environmental Quality, 1410 N. Hilton, Boise ID 83706-1255.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Disposal of Radioactive Materials Not Regulated by Act of 1954

Docket No. 58-0110-0701

PENDING RULE

(3-15-02)

b. Idaho State Law Library, 451 W. State Street, P.O. Box 83720, Boise ID 83720-0051. (3-15-02)

c. U.S. Government Printing Office, ~~Superintendent of Documents, Washington, D.C. 20402, or U.S. Government Bookstore, Room 194 Federal Bldg., 915 Second Ave., Seattle, WA 98174~~ <http://www.gpoaccess.gov/index.html>. (3-15-02)()

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

01. **Accelerator-Produced Radioactive Material.** Any material made radioactive by exposing it to the radiation from a particle accelerator. (3-15-02)

02. **Board.** The Idaho Board of Environmental Quality. (3-15-02)

03. **Byproduct Material.** Byproduct Material means: (3-15-02)

a. Any radioactive material (except special nuclear material) yielded in, or made radioactive by, exposure to the radiation incident to the process of producing or utilizing special nuclear material; and (3-15-02)

b. The tailings or waste produced by the extraction or concentration of uranium or thorium from ore processed primarily for its source material content. (3-15-02)

04. **Department.** The Idaho Department of Environmental Quality. (3-15-02)

05. **Exempt Quantities and Concentrations of Byproduct Materials.** Radioactive materials defined as byproduct by the U.S. Nuclear Regulatory Commission (10 CFR 30.14 through 30.16, 10 CFR 30.18 through 30.21, 10 CFR 32.11 and 10 CFR 32.18) in which the quantity and concentration of radionuclides are considered exempt from regulation. (3-15-02)

06. **Naturally Occurring Radioactive Material (NORM).** Any material containing natural radionuclides at natural background concentrations, where human intervention has not concentrated the naturally occurring radioactive material or altered its potential for causing human exposure. NORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)

07. **Operator.** Any person(s) currently responsible, or responsible at the time of disposal, for the overall operation of a hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)

08. **Owner.** Any person(s) who currently owns, or owned at the time of disposal, a

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Disposal of Radioactive Materials Not Regulated by Act of 1954

Docket No. 58-0110-0701

PENDING RULE

hazardous waste treatment, storage or disposal facility or part of a hazardous waste treatment, storage or disposal site. (3-15-02)

09. Person. Any individual, association, partnership, firm, joint stock company, trust, political subdivision, public or private corporation, state or federal government department, agency, or instrumentality, municipality, industry, or any other legal entity which is recognized by law as the subject of rights and duties. (3-15-02)

10. Radioactive Material. Radioactive Material includes: (3-15-02)

a. Technologically Enhanced Naturally Occurring Radioactive Material; (3-15-02)

b. Accelerator Produced Radioactive Material; (3-15-02)

c. Exempt Quantities and Concentrations of Byproduct Materials; ~~and~~ (3-15-02)(____)

d. Unimportant Quantities of Source Material; and (3-15-02)(____)

e. Any other byproduct, source material, or special nuclear material or devices or equipment utilizing such material, which has been declared exempt from regulation under the Atomic Energy Act of 1954, as amended, for the purposes of disposal pursuant to 10 CFR 30.11, 10 CFR 40.14, 10 CFR 70.17. (____)

11. Reasonably Maximally Exposed Individual. That individual or group of individuals who by reason of location has been determined, through the use of environmental transport modeling and dose calculation, to receive the highest total effective dose equivalent from radiation emitted from the site and/or radioactive material transported off-site. (3-15-02)

12. Source Material. Source material means: (3-15-02)

a. Uranium or thorium, or any combination thereof, in any physical or chemical form; or (3-15-02)

b. Ores which contain by weight one-twentieth of one percent (0.05%) or more of: (3-15-02)

i. Uranium; (3-15-02)

ii. Thorium; or (3-15-02)

iii. Any combination thereof. (3-15-02)

c. Source material does not include special nuclear material. (3-15-02)

13. Special Nuclear Material. Special Nuclear Material means: (3-15-02)

a. Plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY**Docket No. 58-0110-0701****Disposal of Radioactive Materials Not Regulated by Act of 1954****PENDING RULE**

235, and any other material which the U.S. Nuclear Regulatory Commission determines to be special nuclear material. (3-15-02)

b. Any material artificially enriched by any of the material listed in Subsection 010.12.a. (3-15-02)

14. Technologically Enhanced Naturally Occurring Radioactive Material (TENORM). Any naturally occurring radioactive materials not subject to regulation under the Atomic Energy Act whose radionuclide concentrations or potential for human exposure have been increased above levels encountered in the natural state by human activities. TENORM does not include source, byproduct or special nuclear material licensed by the U.S. Nuclear Regulatory Commission under the Atomic Energy Act of 1954. (3-15-02)

15. Unimportant Quantities of Source Material. Radioactive materials defined as unimportant quantities of source materials by the U.S. Nuclear Regulatory Commission (10 CFR 40.13). (3-15-02)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.20 - RULES FOR ADMINISTRATION OF DRINKING WATER LOAN PROGRAM

DOCKET NO. 58-0120-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 186 through 202.

The agency received no public comments; however, the proposed rule has been revised at Sections 004, 005, 010, 020, 030, 040, 041, 042, and 050 for consistency and clarification. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/drinking_water_loans/58_0120_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The fiscal impact is indeterminate but should not be material to the fund. The EPA's Drinking Water State Revolving Fund (DWSRF) rules limit a state's ability in making disadvantaged loans: "A State may take an amount equal to no more than 30% of the amount of a particular fiscal year's capitalization grant to provide loan subsidies to disadvantaged communities." (40 CFR 35.3525.b.2)

If DEQ receives a \$5 million capitalization grant and loaned the maximum amount possible to disadvantaged communities (assuming a 0% loan interest rate instead of a 3% interest rate), the income loss would be \$45,000 per year (declining thereafter as loans are repaid). However, with the likely continuation of the DWSRF funding by Congress, additional capitalization will more than offset any forgone income.

IDAHO CODE 39-107D STATEMENT: This rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Dated this 11th day of October, 2007.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418 / Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking, as announced in the Notice of Negotiated Rulemaking published on May 2, 2007, is to revise the conditions and qualifications for disadvantaged loans set out in IDAPA 58.01.20, Rules for Administration of Drinking Water Loan Program. An analysis of the drinking water loans made to date illustrates that the qualification for a disadvantaged loan may be too restrictive (the program has been in place for 9 years and only 2 disadvantaged loans have been entered into: Salmon and Castleford). The combination of how communities prove their median household income and the disadvantaged loan qualifications combine to provide difficult challenges for some communities. This rulemaking will include the following proposed revisions:

1. Remove one of the conditions for a disadvantaged loan (median household income does not exceed 80% of the statewide nonmetropolitan median household income) and change the second condition (reducing the percentage required for user fees from 2% to 1½%). The remaining disadvantaged loan qualification condition would then be that user fees would exceed 1½% of median household income.
2. Allow drinking water systems to make use of approved third party income surveys to verify the community's median household income. Currently communities must use census data, but most communities are not reported at the census level (out of 756 community water systems only 143 are cities).

In addition, this proposed rule contains revisions which were not included in the scope of the Notice of Negotiated Rulemaking. The majority of these revisions were suggested or requested by members of the negotiating group during the meeting held on May 17, 2007.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

These revisions include the removal of obsolete language, revising definitions and rule text for consistency with other DEQ rules, and cleaning up outdated language.

Citizens in economically disadvantaged communities, and cities, counties, districts and associations that own and operate public drinking water systems may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE SECTION 39-107D STATEMENT: This proposed rule does not regulate an activity not regulated by the federal government, nor is it broader in scope or more stringent than federal regulations.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Section 67-5220, Idaho Code and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 65, and a preliminary draft rule was made available for public review. One meeting was held on May 17, 2007. Several members of the public attended the meeting and the discussion resulted in revisions to the preliminary draft rule, some of which are beyond the scope of the May 2, 2007 Notice of Negotiated Rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007.

Dated this 29th day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

004. POLICY.

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water Loan Program. The Drinking Water Loan Program provides assistance to eligible public drinking water systems for the planning, design, and construction of facilities to ensure safe and adequate drinking water. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects which shall facilitate the compliance of any eligible public water system with national primary drinking water regulations applicable to the system or to otherwise significantly further the health protection objectives of these rules and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.). ~~(5-3-03)~~(____)

005. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. ~~(5-3-03)~~(____)

02. Availability of Referenced Material. The “Drinking Water Loan Handbook of Procedures” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (____)

006. CONFIDENTIALITY.

Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Chapter 3, Title 9, Idaho Code, and IDAPA 58.01.21, “Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality.” (____)

0067. SYSTEM ELIGIBILITY.

01. Eligible Systems. Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)

02. Systems Not Eligible. The following public drinking water systems will not be considered eligible for project loans: (3-23-98)

a. Systems that do not have the technical, managerial, and financial capability to ensure compliance with the requirements of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (3-23-98)

b. Systems in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.); (3-23-98)

c. Systems under disapproval designation as outlined in the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08); (3-23-98)

d. Systems under current drinking water enforcement action by the Department; or

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

(3-23-98)

- e. Systems delinquent in payment of the annual state drinking water fee assessment. (3-23-98)

03. Assistance to Ensure Compliance. Public water systems not eligible for project loans as described in Subsections 006.02.a. through 006.02.d. may receive assistance if: (5-3-03)

- a. The use of the assistance will ensure compliance; (3-23-98)
- b. The owner or operator of the system agrees to undertake feasible and appropriate changes in operations (including ownership, management, accounting, rates, maintenance, consolidation, alternative water supply, or other procedures); (3-23-98)
- c. The Department determines that the measures are necessary to ensure that the system has the technical, managerial, and financial capability to comply with state and federal drinking water requirements over the long term; and (3-23-98)
- d. Prior to providing assistance under this section to a public water system that is in significant noncompliance with any requirement of the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) ~~or variance~~, the Department conducts a review to determine whether this section applies to the system. ~~(3-23-98)~~()

~~0078.~~ -- 009. (RESERVED).

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-23-98)

- 01. **Applicant.** Any qualifying entity making application for Drinking Water loan funds. (5-3-03)
- 02. **Board.** The Idaho ~~State~~ Board of Environmental Quality. ~~(3-23-98)~~()
- 03. **Categorical Exclusion (CE).** Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental ~~assessment~~ information document nor an environmental impact statement is required. ~~(5-3-03)~~()
- 04. **Community Water System.** A public drinking water system that: (5-3-03)
 - a. Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-23-98)
 - b. Regularly serves at least twenty-five (25) year-round residents. (3-23-98)
- 05. **Construction.** The building, erection, acquisition, alteration, reconstruction, improvement, or extension of public drinking water system facilities, including preliminary

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

planning to determine the economic and engineering feasibility of public drinking water system facilities, the engineering, architectural, legal, fiscal, and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures, other action necessary in the construction of public water system facilities, the inspection and supervision of the construction, and start-up of the associated facilities. (5-3-03)

06. Contaminant. Any physical, chemical, biological, or radiological substance or matter in water. (5-3-03)

07. Department. The Idaho Department of Environmental Quality. (3-23-98)

08. Director. The Director of the Idaho Department of Environmental Quality or ~~his~~ her the Director's designee. (3-23-98)()

09. Disadvantaged Community. The service area of a public water system that meets affordability criteria established by the Department of Environmental Quality after public review and comment. (3-23-98)

10. Disadvantaged Loans. Loans made to a disadvantaged community. (3-23-98)

11. Distribution System. Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. (5-3-03)

142. Eligible Costs. Costs which are necessary for planning, designing, and/or constructing public water system facilities. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 041. (5-3-03)

153. Eligible Systems. Public and private community water systems and nonprofit noncommunity water systems. (3-23-98)

164. Engineering Report. ~~A report which compares public water system facility alternatives and identifies the most cost effective, environmentally sound alternative. A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, or distribution alternatives for the public drinking water system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the Handbook.~~ (3-23-98)()

135. Environmental Impact Statement (EIS). A document prepared by the ~~grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook~~ applicant when the Department determines that the proposed drinking water construction project will significantly affect the environment ~~as described in Appendix C of the Handbook~~. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

impacts can be either avoided or mitigated. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing an EIS. (5-3-03)()

126. Environmental Information Document (EID). Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed drinking water construction project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (5-3-03)()

17. Facility Plan. A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. ()

178. Financial Management System. Uniform method of recording, summarizing, and analyzing financial information about the public water system facility. (3-23-98)

189. Finding Of No Significant Impact (FQNSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental assessment or a summary of it and shall note any other environmental documents related to it. (5-3-03)()

~~1920.~~ **Handbook.** "Drinking Water Loan Handbook of Procedures." (5-3-03)

~~201.~~ **Ineligible Costs.** Costs which are described in Subsection 041.05. (5-3-03)

~~212.~~ **Managerial Capability.** The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (5-3-03)

~~223.~~ **Maximum Contaminant Level (MCL).** The maximum permissible level of a contaminant in water which is delivered to any user of a public water system. (5-3-03)

~~23. Municipality.~~ Any county, city, special service district, nonprofit corporation or other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project. (5-3-03)

24. Noncommunity Water System. A public water system that is not a community water system. (3-23-98)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

25. Nonprofit Noncommunity Water System. A public water system that is not a community water system and is governed by Section 501 of the U. S. Internal Revenue Code and includes but is not limited to: state agencies, municipalities, and nonprofit organizations such as churches and schools. (3-23-98)

26. Nontransient Noncommunity Water System. A public water system that is not a community water system and that regularly serves at least 25 (twenty-five) of the same persons over six (6) months per year. (3-23-98)

27. O & M Manual. Operation and Maintenance Manual is a guidance and training manual outlining the optimum operation and maintenance of the public water system facility or its components. (3-23-98)

28. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (3-23-98)

29. Plan of Operation. A schedule of specific actions and completion dates for construction, start-up, and operation of the public water system facility. (5-3-03)

30. Priority List. A list of proposed drinking water projects rated by severity of risk to public health, the necessity to ensure compliance with IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.), population affected, and need on a household basis for protection of Idaho's public drinking water. (5-3-03)

31. Public Drinking Water Systems/Public Water System/Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A public water system is either a "community water system" or a "noncommunity water system." (5-3-03)()

~~a. In General. A system for the provision to the public of water for human consumption through pipes or other constructed conveyances if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty five (25) individuals daily at least sixty (60) days out of the year. Such term includes:~~ (5-3-03)

~~i. Any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such systems; and~~ (5-3-03)

~~ii. Any collection or pretreatment storage facilities not under such control which are~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

~~used primarily in connection with such system. A public drinking water system is either a "community water system" or a "noncommunity water system."~~ (5-3-03)

~~b. Connections. For purposes of paragraph a. of this subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection if:~~ (5-3-03)

~~i. The water is used exclusively for purposes other than residential uses (consisting of drinking, cooking, and bathing, or other similar uses);~~ (3-23-98)

~~ii. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or~~ (5-3-03)

~~iii. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.~~ (5-3-03)

~~e. Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public drinking water system if the system or the residential or similar users of the system comply with subparagraphs b.ii. and b.iii. of this subsection.~~ (5-3-03)

32. Qualifying Entity. Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public water system or irrigation system and which establishes and maintains a dedicated loan repayment source. (3-23-98)()

33. Rehabilitation. The repair or replacement of segments of drinking water facilities. (5-3-03)

34. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (5-3-03)

35. State. The State of Idaho. (3-23-98)

36. Supplier or Provider of Water. Any person who owns and/or operates a public water system. (3-23-98)

37. Suspension. An action by the Director to suspend a loan contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-23-98)

38. Technical Capability. The ability of the public drinking water system to comply with existing and expected drinking water rules. (5-3-03)

39. Termination. An action by the Director to permanently terminate a loan contract

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

prior to project completion for a specific cause. Terminated contracts shall not be reinstated.

(3-23-98)

40. Unreasonable Risks to Health (URTH). Refers to a level of contamination that presents an “unreasonable risk to health” and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency.

(5-3-03)

41. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the public water system ~~facility~~.

~~(3-23-98)~~(____)

42. Water System Protection Ordinance. An ordinance adopted pursuant to Chapter 32, Title 42, Idaho Code, or other applicable law which requires new connections to be properly designed and constructed, which prohibits cross-connections with non-potable water sources (and in all ways protects the water system from injection of contaminants), and which provides for fees for service from users or classes of users.

(3-23-98)

43. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants.

(5-3-03)

011. FINANCIAL TECHNICAL AND MANAGEMENT CAPABILITY ANALYSIS.

No loans shall be awarded for the construction of projects unless the applicant has demonstrated and certified that it has the legal, technical, institutional, managerial, and financial capabilities to ensure construction, operation and maintenance (including equipment replacement of the proposed public water system facility), and to repay principal and interest which would be due on a loan from the state revolving loan fund.

(3-23-98)

01. Information Needed. Before an application shall be considered complete, the applicant must submit all necessary information on a form prescribed by the Department along with an analysis of that information. The information shall include, but not be limited to, demographic information of the applicant, estimated construction costs, annual operating costs, and information regarding the financing of the project, including the legal debt limit of the applicant and the existence and amount of any outstanding bonds or other indebtedness which may affect the project.

(3-23-98)

02. Incorporated Nonprofit Applicants.

(3-23-98)

a. In addition to all other information required to be submitted by these rules and regulations, an incorporated nonprofit applicant must demonstrate to the satisfaction of the Department by its articles of incorporation and/or bylaws, that:

(3-23-98)

i. The corporation is nonprofit and lawfully incorporated pursuant to Chapter 03, Title 30, Idaho Code;

(3-23-98)

ii. The corporation is authorized to incur indebtedness to construct, improve, or repair public water systems facilities;

(3-23-98)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

iii. The corporation is authorized to secure indebtedness by pledging corporation property, including any revenues raised through a user charge system; (3-23-98)

iv. The corporation exists either perpetually or for a period long enough to repay a public water system facility loan; and (3-23-98)

v. The corporation is capable of raising revenues by fixing and collecting user charges. (3-23-98)

b. The Department may impose conditions on the making of a public water system facility loan to an incorporated nonprofit applicant which are necessary to carry out the provisions of these rules and regulations and the provisions of Chapter 76, Title 39, Idaho Code. (3-23-98)

03. Cost Allocation. An applicant proposing to construct public water system facilities designed to serve two (2) or more qualifying entities must show how the costs shall be allocated among the participating entities. Such applicants must provide an executed inter-~~municipal~~ organizational service agreement which, at a minimum, incorporates the following information: (~~3-23-98~~)()

a. The basis upon which the costs are allocated; (3-23-98)

b. The formula by which the costs are allocated; and (3-23-98)

c. The manner in which the cost allocation system shall be implemented. (3-23-98)

04. Waivers. The requirement in Subsection 011.03 may be waived by the Department if the applicant can demonstrate: (3-23-98)

a. Such an agreement is already in place; (3-23-98)

b. There is documentation of a service relationship in the absence of a formal agreement; or (3-23-98)

c. The entity providing public drinking water exhibits sufficient financial strength to continue the project if one (1) or more of the entities supplying drinking water fails to participate. (3-23-98)

012. -- 019. (RESERVED).

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. ~~Limited~~ Loan funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health criteria, water quality criteria, and condition of the existing system. (~~5-3-03~~)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance under the Drinking

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

Water Loan Program in accordance with these rules. Projects considered for priority rating shall first be evaluated by Department regional staff. (5-3-03)

02. Priority Rating. The priority rating system shall be based on a weighted numerical points system. Priority criteria shall contain the following points: (3-23-98)

a. Public Health Emergency. Shall be ~~certified~~ by the ~~Department~~ Idaho Board of Environmental Quality or by a District Board of Health. Such emergencies shall be related to a waterborne outbreak, contamination levels at or above Unreasonable Risks to Health (URTH), or a failed water source. (100 points) (~~5-3-03~~)()

b. Public Health Hazard. Identified and ~~verified~~ documented by the Department or by a District Health Department. Points shall be given based on the presence and severity of waterborne illnesses. (19 points) (~~3-23-98~~)()

c. Water Quality Violations. Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents. (71 points) (3-23-98)

d. General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities for pumping, treating, and delivering drinking water. (61 points) (3-23-98)

e. Overall Urgency. Points shall be given to entities that need a new source of water to assure safety and adequate supply. (10 points) (3-23-98)

f. Consent or Administrative Orders. Points shall be given if the system is operating under an order. (30 points) (3-23-98)

g. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring. (16 points) (3-23-98)

h. Affordability. Points shall be given when proposed system user charges exceed state affordability guidelines. (10 points) (3-23-98)

03. Priority List. A list shall be developed annually from projects rated according to Subsection 020.02. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (3-23-98)

04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for, or scope of any project, a reevaluation of that priority rating shall be conducted. (3-23-98)

05. Priority Target Date. A qualifying entity, whose project is on the adopted priority list, and for which funding is available, shall be contacted by the Department and a target date for submission of a completed loan application shall be established. (3-23-98)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

06. Project Bypass. A project that does not or shall not meet the project target date or a Department schedule that allows for timely utilization of loan funds may be bypassed, substituting in its place the next highest ranking project or projects that are ready to proceed. A project that is bypassed shall be notified in writing of the reasons for being bypassed. (3-23-98)

021. DISADVANTAGED LOANS.

Disadvantaged Loan Awards. In conjunction with the standard loans, the Department may award disadvantaged loans to applicants deemed disadvantaged using the following criteria: (3-23-98)

01. Qualifying for a Disadvantaged Loan. In order to qualify for a disadvantaged loan, a loan applicant must have ~~a median household income that does not exceed eighty percent (80%) of the statewide non-metropolitan median household income from the most recent census data, and~~ an annual cost of drinking water service for residential customers which exceeds ~~two percent~~ one and one-half percent (21½%) of the median household income. (3-23-98)()

a. The annual cost includes all operating, maintenance, replacement, and debt service costs (both for the existing system and for upgrades) being financed with state revolving funds. If the applicant's service area is not within the boundaries of a municipality, ~~or if the applicant's service area's median household income is not consistent with the municipality as a whole,~~ the applicant may use the census data for the county in which it is located ~~or may use a representative survey, conducted by a Department approved, objective third party, to verify the median household income of the applicant's service area.~~ (3-23-98)()

b. For disadvantaged applicants for which the annual cost exceeds ~~two percent~~ one and one-half percent (21½%) of the median household income, those applicants must agree to seek assistance from all other available state and federal agencies offering grants before loan terms can be adjusted. (5-3-03)()

02. Adjustment of Loan Terms. Loan terms may be adjusted in the following sequence: (5-3-03)

a. First, the length of the loan repayment may be extended in increments of years from twenty (20) years up to a maximum of thirty (30) years until the annual cost equals ~~two percent~~ one and one-half percent (21½%) of median household income. (3-23-98)()

b. If at a thirty (30) year repayment, the annual cost still exceeds ~~two percent~~ one and one-half percent (21½%) of the median household income, the loan interest rate may be reduced from the rate established by the Director for standard loans to a rate that results in an annual charge equal to ~~two percent~~ one and one-half percent (21½%) of median household income. (3-23-98)()

c. The interest rate may be reduced to as low as zero percent (0%). If even at zero percent (0%) interest and a thirty (30) year repayment, the annual charge per residential user still exceeds ~~two percent~~ one and one-half percent (21½%) of median household income, the principal which causes the user charge to exceed ~~two percent~~ one and one-half percent (21½%) may be reduced except the principal reduction cannot exceed an amount greater than fifty percent (50%) of the total ~~project cost~~ loan. (5-3-03)()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

022. -- 029. (RESERVED).

030. PROJECT FUNDING.

Loan funds awarded under this program may be used to prepare an engineering report or a facility plan which identifies the ~~most~~ cost effective, *and* environmentally sound drinking water system alternative to achieve or maintain compliance with ~~the Idaho Rules for Public Drinking Water Systems~~, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., and which is approvable by the Department. Loan funds may also be used for design and construction of the chosen alternative.

(~~5-3-03~~)(____)

01. Project Step Funding. Projects may be funded in steps: (3-23-98)

a. Step 1. Engineering report or facility plan prepared by an Idaho licensed professional engineer ~~licensed in the state of Idaho~~ who carries professional liability insurance in accordance with Subsection 050.05.d., and in a format prescribed by the Department;

(~~5-3-03~~)(____)

b. Step 2. Design, which includes the preparation by an Idaho licensed professional engineer ~~licensed in the state of Idaho~~ of the detailed engineering plans and specifications necessary for the bidding and construction of the project;

(~~3-23-98~~)(____)

c. Step 3. Construction, which includes bidding and actual construction of the project; or

(3-23-98)

d. Step 4. A combination of Step 2 and Step 3. (3-23-98)

02. Combination Step Funding. Projects may be funded in any combination of the steps with approval of the Department. Separate loans may be awarded for Step 1 or Step 2 projects. If a Step 1 or Step 2 project proceeds to construction, either the Step 1 or Step 2 loan, or both, may be consolidated with the Step 3 loan. If a project does not proceed to construction, outstanding Step 1 and Step 2 loans shall be amortized and a repayment schedule prepared by the Department.

(3-23-98)

03. ~~Cost Effective~~ Requirements for Awarding a Loan. Step 2, Step 3, or Step 4 loans shall not be awarded until a final cost effective and environmentally sound alternative has been selected by the Step 1 engineering report ~~as~~ or facility plan and approved by the Department. ~~The cost effective alternative may be selected based on the comments received from at least one (1) public hearing attended by affected users~~ If the engineering report or facility plan has not been completed pursuant to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities," at least one (1) public hearing must be held so that the affected users can submit comments before accepting the cost effective and environmentally sound selected alternative. The public hearing will be held within the jurisdiction of the qualifying entity and conducted in accordance with state law.

(~~3-23-98~~)(____)

04. Funding for Reserve Capacity. Funding for reserve capacity of a drinking water system shall not exceed a twenty (20) year population growth except that distribution and

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

transmission lines which may be planned for a forty (40) year useful life. (5-3-03)

031. LIMITATION OF PRE-LOAN ENGINEERING REVIEWS.

Department ~~of Environmental Quality~~ staff may review engineering or facility planning documents for any drinking water system. However, in order for the costs of preparation of pre-loan engineering documents to be loan eligible, the consulting engineer must submit a certificate of professional liability indemnification in accordance with Subsection 050.05.d. ~~(3-23-98)~~(____)

032. -- 039. (RESERVED).

040. LOAN APPLICATION AND REVIEW.

01. Submission of Application. The applicant shall submit to the Department, a completed application on a form as prescribed by the Department. (5-23-98)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. A lawful resolution passed by the governing body authorizing an elected official or authorized individual of the qualifying entity to execute a loan contract and sign subsequent loan disbursement requests; and (5-3-03)

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine whether the costs associated with the tasks are eligible costs pursuant to Section 041; and (5-3-03)

c. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum: (5-3-03)

i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and (5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and (5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and (5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and (5-3-03)

d. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 041; and (5-3-03)

e. A demonstration that the obligation to pay the costs for which funding is requested

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, ~~50-341~~ 59-1026, and 42-3212, Idaho Code. ~~(5-3-03)~~()

f. In the case of a privately owned system, demonstrate that there is adequate security for the repayment of the loan. (3-23-98)

g. Step 1~~7~~₂: Engineering Report or Facility Plan. Plan of study describing the work tasks to be performed in the engineering report or facility plan, a schedule for completion of the work tasks, and an estimate of man hours and costs to complete the work tasks. ~~(3-23-98)~~()

h. Step 2~~7~~₂: Design. ~~(3-23-98)~~()

i. Engineering report or facility plan including a final environmental document and decision in accordance with Section 042; ~~(5-3-03)~~()

ii. Financial, technical, and management capability analysis as provided in Subsection 011.01; (3-23-98)

iii. Inter-~~municipal~~ organizational service agreements between all qualifying entities within the scope of the project, if applicable; and ~~(3-23-98)~~()

i. Step 3~~7~~₂: Construction. ~~(3-23-98)~~()

i. Documented evidence of all necessary easements and land acquisition. (5-3-03)

ii. Biddable plans and specifications of the approved public water system facility alternative; (3-23-98)

iii. A plan of operation and project schedule; (3-23-98)

iv. A user charge system, water use system protection ordinance, and financial management system; and (3-23-98)

v. A staffing plan and budget. (3-23-98)

j. Step 4~~7~~₂: Design and Construction. Loan applicants must submit all documentation specified in Subsection 040.02.d. prior to advertising for bids on construction contracts. ~~(3-23-98)~~()

03. Determination of Completeness of Application. The Department shall review the application to determine whether it includes all of the information required by Subsection 040.02. (5-3-03)

04. Notification of Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation shall be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

05. Reapplication for Loan. The action of disapproving, recalling, or terminating a loan in no way precludes or limits the former applicant from reapplying for another loan when the project deficiencies are resolved and project readiness is secured. (3-23-98)

041. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary for planning, designing and/or constructing drinking water systems; (5-3-03)

b. Reasonable; and (5-3-03)

c. Costs that are not ineligible as described in Subsection 041.05. (5-3-03)

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for facility planning, the facility plan or ~~preliminary~~ engineering report for design and construction of drinking water systems, and any other relevant information in the application that describes the scope of the project to be funded. ~~(5-3-03)~~(____)

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections ~~67-2801 et seq., 67-2320, 50-341~~ 59-1026, and 42-3212, Idaho Code. ~~(5-3-03)~~(____)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable, and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary operating expenses ~~of local government~~ such as salaries and expenses of a mayor, city council members, board; or ~~a~~ city, district, or board attorney; ~~(5-3-03)~~(____)

b. Costs under construction contracts bid and executed in compliance with state public works construction laws; (5-3-03)

c. Professional and consulting services utilizing a lumpsum contract, an hourly rate contract, a time and materials contract or cost plus a fixed fee contract; (5-3-03)

d. Engineering directly related to the public water system facilities; (5-3-03)

e. Financial and management capability analysis if it ensures compliance; (5-3-03)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Docket No. 58-0120-0701

Rules for Administration of Drinking Water Loan Program

PENDING RULE

- f.** Preparation of construction drawings, specifications, estimates, and construction contract documents; (5-3-03)
 - g.** Landscaping; (5-3-03)
 - h.** Removal and relocation or replacement of utilities for which the qualifying entity is legally obligated to pay; (5-3-03)
 - i.** Material acquired, consumed, or expended specifically for the project; (5-3-03)
 - j.** A reasonable inventory of laboratory chemicals and supplies necessary to initiate plant operations; (5-3-03)
 - k.** Preparation of an operation and maintenance manual; (5-3-03)
 - l.** Preparation of a plan of operation; (5-3-03)
 - m.** Start-up services; (5-3-03)
 - n.** Project identification signs; (5-3-03)
 - o.** Public participation for alternative selection; (5-3-03)
 - p.** Development of user charge and financial management systems; (5-3-03)
 - q.** Development of water system protection and backflow prevention ordinance or rule; (5-3-03)
 - r.** Initial staffing plans and budget development; (5-3-03)
 - s.** Costs of assessing and defending contractor claims determined unmeritorious by the Department; (5-3-03)
 - t.** Site acquisition costs, including right of way and the site for public water system; and (5-3-03)
 - u.** Certain direct and other costs as determined eligible by the Department. (5-3-03)
- 05. Ineligible Project Costs.** Costs which are ineligible for funding include, but are not limited to: (5-3-03)
- a.** Basin or area wide planning not directly related to the project; (5-3-03)
 - b.** Bonus payments not legally required for completion of construction before a contractual completion date; (5-3-03)
 - c.** Personal injury compensation or damages arising out of the project; (5-3-03)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Docket No. 58-0120-0701

Rules for Administration of Drinking Water Loan Program

PENDING RULE

- d. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
- e. Costs outside the scope of the approved project; (5-3-03)
- f. Ordinary operating expenses ~~of local government~~, such as salaries and expenses of a mayor, city council members, board, or city, district or board attorney; ~~(5-3-03)~~()
- g. Cost of land in excess of that needed for the proposed project; (5-3-03)
- h. Cost of condemnations; or (5-3-03)
- i. Engineering costs incurred without professional liability insurance. (5-3-03)

06. Notification Regarding Ineligible Costs. Prior to providing a loan offer, the Department shall notify the applicant if certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Loan Offer. The loan offer shall reflect those costs determined by the Department to be eligible costs. The loan offer, however, may include estimates of some eligible costs that have not yet been set, such as construction costs. Actual eligible costs may differ from such estimated costs set forth in the loan offer. In addition, loan disbursements may be increased or decreased if eligible costs are modified as provided in Section 060. (5-3-03)

042. ENVIRONMENTAL REVIEW.

01. ~~Overview of Process~~ Environmental Documentation. The applicant shall complete an environmental review as part of and in conjunction with an engineering report or facility plan. Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The applicant shall consult with the Department at an early stage in the ~~preparation of the engineering report~~ loan process to determine the required level of environmental review. Based on review of existing information, ~~the Department shall assess potential and assessment of environmental impacts, and shall instruct the applicant to either shall~~ complete one (1) of the following per the Department's instruction: ~~(3-23-98)~~()

- a. Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (3-23-98)
- b. Prepare an Environmental Information Document (EID) in a format specified by the Department; or (3-23-98)
- c. Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (3-23-98)

02. Categorical Exclusions. ~~At the request of an applicant, the Department shall determine from existing information whether an action is consistent with categories eligible for~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

~~exclusion where upon~~ If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: ()

a. Determine if the action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of ~~Categorical Exclusion~~ CE from substantive environmental review. Once the ~~Categorical Exclusion~~ CE is granted for the ~~proposed project and~~ selected alternative, the Department will publish a notice of ~~Categorical Exclusion has been published~~ CE in a local newspaper to inform the public of this action, following which the engineering report or facility plan can be approved and the loan award can proceed.

(3-23-98)()

b. Determine if the action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If a CE is not issued, the Department shall notify the applicant to prepare an EID. ()

03. Environmental ~~Review Process~~ Information Document Requirements. ~~When issuance of a Categorical Exclusion is not appropriate, the applicant shall prepare an Environmental Information Document (EID).~~ When an EID is required, the applicant shall prepare the EID in accordance with the following Department procedures: (3-23-98)()

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. (3-23-98)

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources. (3-23-98)

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a “finding of no significant impact” (FONSI). (3-23-98)()

04. Final Finding of No Significant Impact. The ~~final~~ Department shall publish the draft FONSI ~~shall be published~~ in a newspaper of general circulation in the geographical area of the proposed project ~~in accordance with state policies on public participation~~ and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment and after any public concerns about project impacts are ~~resolved~~ addressed, the FONSI shall become final ~~and the engineering report can be approved and the loan can be awarded~~. The Department shall assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the engineering report or facility plan. (3-23-98)()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: (3-23-98)

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; (3-23-98)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; (3-23-98)

c. Conduct a public hearing which may be in conjunction with an engineering report or facility plan hearing; and (3-23-98)()

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. (3-23-98)

06. Final EIS. Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 042.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The loan agreement can be completed once the final EIS has Department approval. (5-3-03)

~~**07. Mitigation Measures.** Prior to approval of a facilities plan, the Department must ensure that effective mitigation measures identified in the FNSI and EID shall be implemented by the applicant.~~ (3-23-98)

087. Partitioning the Environmental Review. Under certain circumstances, the building of a component/partition of a drinking water system may be justified in advance of all environment review requirements for the remainder of the system. The Department shall approve partitioning the environment review in accordance with established procedures. (3-23-98)

~~**098. Federal Environmental Review**~~ **Use of Environmental Reviews Conducted by Other Agencies.** If environmental review for the project has been conducted by another state, federal, or local agency, the Department may, ~~in~~ at its discretion, issue its own determination by adopting the document and public participation process of the ~~federal~~ other agency. (3-23-98)()

~~**409.**~~ **Validity of Review.** Environmental reviews are valid for five (5) years. If a loan application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public views and shall: (3-23-98)

a. Reaffirm the earlier decision; or (3-23-98)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (3-23-98)

043. -- 049. (RESERVED).

050. LOAN OFFER AND ACCEPTANCE.

01. Loan Offer. Loan offers shall be delivered to successful applicants by representatives of the Department or by registered mail. (3-23-98)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

02. Acceptance of Loan Offer. Applicants have sixty (60) days in which to officially accept the loan offer on prescribed forms furnished by the Department. The sixty (60) day acceptance period commences from the date indicated on the loan offer notice. If the applicant does not accept the loan offer within the sixty (60) day period, the loan funds may be offered to the next project on the priority list. (3-23-98)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or ~~his/her~~ the Director's designee and upon signature by the authorized representative of the qualifying entity, the loan offer shall become a contract. Upon accepting a loan offer, a qualifying entity becomes a loan recipient. The disbursement of funds, pursuant to a loan contract, is subject to a finding by the Director that the loan recipient has complied with all loan contract conditions and has prudently managed the project. The Director may, as a condition of disbursement, require that a loan recipient vigorously pursue any claims it has against third parties who shall be paid in whole or in part, directly or indirectly, with loan funds. No third party shall acquire any rights against the state or its employees from a loan contract. (~~3-23-98~~)(____)

04. Estimate of Reasonable Cost. All loan contracts shall include the eligible costs of the project. Some eligible costs may be estimated and disbursements may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Loan Offers. The loan offer shall contain such terms as are prescribed by the Department including, but not limited to: (3-23-98)

a. Terms consistent with these rules, the project step to be funded under the loan offer, and Chapter 76, Title 39, Idaho Code; (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation, design, construction, and management of the project; (3-23-98)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports or facility plans, design, and construction (including the Public Works Contractors License Act (Idaho Code Sections 54-1901 through 54-1924)); the Public Contracts Bond Act (Idaho Code Sections 54-1925 through 54-1930); and the Safe Drinking Water Act (42 U.S.C. Section 300f et seq.) requirements for projects funded with loan moneys of federal origin; (~~3-23-98~~)(____)

d. Requirement for the prime engineering firm(s), ~~and their principals~~ retained for engineering services, to carry professional liability insurance to protect the public from negligent acts of the engineer and errors of omission of a professional nature. The total aggregate of the professional liability of the engineer insurance shall be one hundred thousand dollars (\$100,000) or twice the amount of the fee of the engineer, whichever is greater. Professional liability insurance must cover all such services rendered for all project phases which are state funded; (~~5-3-03~~)(____)

e. The project shall be bid, contracted, and constructed according to the current edition of Idaho Standards for Public Works Construction and the Idaho Rules for Public Drinking Water Systems (IDAPA 58.01.08) unless the qualifying entity has approved and adopted acceptable public works construction standards approved by the Department; (5-3-03)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY Rules for Administration of Drinking Water Loan Program

Docket No. 58-0120-0701
PENDING RULE

f. The loan interest rate for loans made during the state fiscal year beginning July 1 shall be established by the Director. The interest rate shall be a fixed rate in effect for the life of the loan. The rate may equal but shall not exceed the current market rate; (5-3-03)

g. All loans, except disadvantaged loans, must be fully amortized within a period not to exceed twenty (20) years after project completion. Disadvantaged loans must be fully amortized within a period not to exceed thirty (30) years. The borrower may elect for either a schedule of semi-annual repayments or annual repayments at the time the loan is finalized; and (3-23-98)

h. Repayment default shall occur when a scheduled loan repayment is thirty (30) days past due. If default occurs, the Department may invoke appropriate loan contract provisions and/or bond covenants. (5-3-03)

051. ACCOUNTING AND AUDITING PROCEDURES.

Loan recipients must maintain project accounts in accordance with generally accepted ~~government~~ accounting principles ~~issued by the Government Accounting Standards Board (GASB).~~ (5-3-03)(____)

(BREAK IN CONTINUITY OF SECTIONS)

995. WAIVERS.

Waiver from the requirements of these rules may be granted by the Department Director or ~~his/her~~ the Director's designee, on a case-by-case basis, upon full demonstration by the loan applicant/recipient requesting the waiver that the following conditions exist. (3-23-98)(____)

01. **Health Hazard.** A significant public health hazard exists; (3-23-98)

02. **Affordability Criteria Exceeded.** The project shall exceed affordability criteria adopted by the Department in the event the waiver is not granted; or (3-23-98)

03. **Availability of Federal Funds.** The waiver shall not affect the availability of federal funds for the project where such funding is required by the entity requesting the waiver. (3-23-98)

~~996. CONFIDENTIALITY.~~

~~Information obtained by the Department under these rules is subject to public disclosure pursuant to the provisions of Title 9, Chapter 3, Idaho Code, and IDAPA 58.01.21, "Rules Governing the Protection and Disclosure of Records in the Possession of the Idaho Department of Environmental Quality."~~ (3-15-02)

997. -- 999. (RESERVED).

SENATE RESOURCES & ENVIRONMENT COMMITTEE

IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

58.01.22 - RULES FOR ADMINISTRATION OF PLANNING GRANTS FOR PUBLIC DRINKING WATER FACILITIES

DOCKET NO. 58-0122-0701

NOTICE OF RULEMAKING - ADOPTION OF PENDING RULE

EFFECTIVE DATE: This rule has been adopted by the Board of Environmental Quality (Board) and is now pending review by the 2008 Idaho State Legislature for final approval. The pending rule will become final and effective immediately upon the adjournment sine die of the Second Regular Session of the Fifty-ninth Idaho Legislature unless prior to that date the rule is rejected, amended or modified by concurrent resolution in accordance with Idaho Code Sections 67-5224 and 67-5291.

AUTHORITY: In compliance with Section 67-5224, Idaho Code, notice is hereby given that the Board has adopted a pending rule. The action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

DESCRIPTIVE SUMMARY: A detailed summary of the reason for adopting the rule is set forth in the initial proposal published in the Idaho Administrative Bulletin, August 1, 2007, Vol. 07-8, pages 203 through 217. The proposed rule has been revised at Sections 001, 004, 006, 010, 020, 030, 032, 033, 040, and 050 in response to public comment and for consistency and clarification. The remainder of the rule has been adopted as initially proposed. The Rulemaking and Public Comment Summary can be obtained at http://www.deq.idaho.gov/rules/drinking_water_grants/58_0122_0701_pending.cfm or by contacting the undersigned.

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities." Therefore, this rule does regulate an activity not regulated by the federal government.

ASSISTANCE ON TECHNICAL QUESTIONS: For assistance on technical questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Dated this 11th day of October, 2007.

Paula J. Wilson, Hearing Coordinator
Department of Environmental Quality
1410 N. Hilton, Boise, Idaho 83706-1255
(208)373-0418/Fax No. (208)373-0481
paula.wilson@deq.idaho.gov

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

THE FOLLOWING NOTICE PUBLISHED WITH THE PROPOSED RULE

AUTHORITY: In compliance with Section 67-5221(1), Idaho Code, notice is hereby given that this agency has proposed rulemaking. This action is authorized by Chapters 1 and 36, Title 39, Idaho Code.

PUBLIC HEARING SCHEDULE: No hearings have been scheduled. Pursuant to Section 67-5222(2), Idaho Code, a public hearing will be held if requested in writing by twenty-five (25) persons, a political subdivision, or an agency.

Written requests for a hearing must be received by the undersigned on or before August 15, 2007. If no such written request is received, a public hearing will not be held.

DESCRIPTIVE SUMMARY: The purpose of this rulemaking, as announced in the Notice of Negotiated Rulemaking published on May 2, 2007, is to revise IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities" (Grant Rules), for consistency with the environmental review section (042) of IDAPA 58.01.20, "Rules for Administration of Drinking Water Loan Program" (Loan Rules). The two sets of rules have different requirements for environmental information document preparation and there is no need for the difference. The current structure of the Grant Rules requires that the grant applicant prepare an environmental information document of a uniform scope, regardless of the need for mitigation. Compliance with the Grant Rules adds a burden to both the applicant and DEQ when a project qualifies for a categorical exclusion. An efficiency would be achieved by adopting the process used for drinking water loans, in which categorical exclusions are specifically allowed with a lower level of effort. Section 042 of the Loan Rules will be used as a model for the environmental review process for grants.

In addition, this proposed rule contains revisions which were not included in the scope of the Notice of Negotiated Rulemaking. The majority of these revisions were suggested or requested by members of the negotiating group during the meeting held on May 17, 2007. These revisions include the removal of references to construction and other obsolete language, revising definitions and rule text for consistency with other DEQ rules, and cleaning up outdated language.

Cities, counties, districts and associations that own and operate public drinking water systems may be interested in commenting on this proposed rule. The proposed rule text is in legislative format. Language the agency proposes to add is underlined. Language the agency proposes to delete is struck out. It is these additions and deletions to which public comment should be addressed.

After consideration of public comments, DEQ intends to present the final proposal to the Board of Environmental Quality in October 2007 for adoption of a pending rule. The rule is expected to be final and effective upon adjournment of the 2008 legislative session if adopted by the Board and approved by the Legislature.

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY**Administration/Planning Grants/Public Drinking Water Facilities****Docket No. 58-0122-0701****PENDING RULE**

FISCAL IMPACT: The following is a specific description, if applicable, of any negative fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year: N/A

IDAHO CODE SECTION 39-107D STATEMENT: There is no federal law or regulation comparable to IDAPA 58.01.22, "Rules for Administration of Planning Grants for Public Drinking Water Facilities." Therefore, the proposed rule does regulate an activity not regulated by the federal government but is not broader in scope or more stringent than federal law.

NEGOTIATED RULEMAKING: The text of the proposed rule has been drafted based on discussions held and concerns raised during negotiations conducted pursuant to Idaho Code Section 67-5220 and IDAPA 04.11.01.812-815. On May 2, 2007, the Notice of Negotiated Rulemaking was published in the Idaho Administrative Bulletin, Vol. 07-5, page 66, and a preliminary draft rule was made available for public review. One meeting was held on May 17, 2007. Several members of the public attended the meeting and the discussion resulted in revisions to the preliminary draft rule, some of which are beyond the scope of the May 2, 2007 Notice of Negotiated Rulemaking.

ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS: For assistance on questions concerning this rulemaking, contact Tim Wendland at tim.wendland@deq.idaho.gov, (208)373-0439.

Anyone may submit written comments on the proposed rule by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before August 29, 2007.

DATED this 29th day of June, 2007.

THE FOLLOWING IS THE TEXT OF THE PENDING RULE

001. TITLE AND SCOPE.

01. Title. These rules will be known and cited as Rules of the Idaho Department of Environmental Quality, IDAPA 58.01.22, "Rules for Administration of Planning Grants for Drinking Water Facilities." (3-30-01)

02. Scope. The provisions of these rules will establish administrative procedures and requirements for establishing, implementing and administering a state grant program providing financial assistance to qualifying entities to prepare an engineering report *in conformance with Chapter 5 of the "Drinking Water Facilities Loan Handbook of Procedures" to evaluate feasible treatment, storage and distribution alternatives for public drinking water systems or facility plan.* (5-3-03)()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

(BREAK IN CONTINUITY OF SECTIONS)

004. INCORPORATION BY REFERENCE AND AVAILABILITY OF REFERENCED MATERIAL.

01. Incorporation by Reference. These rules do not contain documents incorporated by reference. ~~(3-30-01)~~(____)

02. Availability of Referenced Material. The “Drinking Water Loan Handbook of Procedures” (Handbook) is available at the Idaho Department of Environmental Quality, Water Quality Division Loan Program, 1410 N. Hilton, Boise, ID 83706-1255, (208)373-0502. (____)

(BREAK IN CONTINUITY OF SECTIONS)

006. POLICY.

It is the policy of the Idaho Board of Environmental Quality, through the Idaho Department of Environmental Quality, to administer the Drinking Water Grant Program. The Drinking Water Grant Program provides assistance to eligible public drinking water systems for the planning of facilities to help ensure safe and adequate supplies of drinking water. It is also the intent of the Idaho Board of Environmental Quality to assign a priority rating to those projects which shall facilitate the compliance of any eligible public drinking water system with national primary drinking water regulations applicable to the system, IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” and the Safe Drinking Water Act, 42 U.S.C. Sections 300f et seq.

~~(3-30-01)~~(____)

(BREAK IN CONTINUITY OF SECTIONS)

010. DEFINITIONS.

For the purpose of the rules contained in this chapter, the following definitions apply: (3-30-01)

01. Applicant. Any qualifying entity making application for drinking water planning grant funds. (3-30-01)

02. Board. The Idaho ~~State~~ Board of Environmental Quality. ~~(5-3-03)~~(____)

03. Categorical Exclusion (CE). Category of actions which do not individually or cumulatively have a significant effect on the human environment and for which, therefore, neither an environmental ~~assessment~~ information document nor an environmental impact statement is required. ~~(3-30-01)~~(____)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

- 04. Community Water System.** A public drinking water system that: (3-30-01)
- a.** Serves at least fifteen (15) service connections used by year round residents of the area served by the system; or (3-30-01)
- b.** Regularly serves at least twenty-five (25) year-round residents. (3-30-01)
- ~~**05. Construction.** The erection, building, acquisition, alteration, reconstruction, improvement or extension of a public drinking water system, including preliminary planning to determine the economic and engineering feasibility of a public drinking water system, the engineering, architectural, legal, fiscal and economic investigations, reports and studies, surveys, designs, plans, working drawings, specifications, procedures and other action necessary in the construction of a public drinking water system, the inspection and supervision of the construction and start up of the associated facilities. (5-3-03)~~
- 065. Contaminant.** Any physical, chemical, biological, or radiological substance or matter in water. (3-30-01)
- 076. Department.** The Idaho Department of Environmental Quality. (3-30-01)
- 087. Director.** The Director of the Idaho Department of Environmental Quality or ~~his~~ the Director's designee. (3-30-01)()
- 098. Distribution System.** Any combination of pipes, tanks, pumps, and other equipment which delivers water from the source(s) and/or treatment facility(ies) to the consumer. (3-30-01)
- ~~**10. Environmental Impact Statement (EIS).** A document prepared by the grantee in accordance with Environmental Review Procedures contained in Chapter 5 of the Handbook when the Department determines that the proposed drinking water construction project will significantly affect the environment as described in Appendix C of the Handbook. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. (3-30-01)~~
- 109. Eligible Costs.** Costs which are necessary for planning public drinking water systems. To be eligible, costs must also be reasonable and not ineligible costs. The determination of eligible costs shall be made by the Department pursuant to Section 032. (5-3-03)
- 120. Engineering Report.** ~~Report prepared in conformance with Chapter 5 of the Handbook to evaluate feasible treatment, storage, and distribution alternatives for public drinking water systems. A report prepared to address a specific portion of the system or facility for which modifications are being designed. These reports address specific purpose and scope, design requirements, and evaluate feasible treatment, storage, and/or distribution alternatives for the public drinking water system to identify the cost effective and environmentally sound alternative. Engineering reports are generally project specific as opposed to an overall system-wide plan such as a master plan or a facility plan. An engineering report shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare an engineering report may be found in the~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

Handbook.

(3-30-01)()

11. Environmental Impact Statement (EIS). A document prepared by the applicant when the Department determines that the proposed drinking water project will significantly affect the environment. The major purpose of the EIS will be to describe fully the significant impacts of the project and how these impacts can be either avoided or mitigated. The Environmental Review Procedures contained in Chapter 5 of the Handbook may be used as guidance when preparing the EIS. ()

132. Environmental Information Document (EID). Any written environmental assessment prepared by an applicant or consultant describing the environmental impacts of a proposed drinking water ~~construction~~ project. This document will be of sufficient scope to enable the responsible official to assess the environmental impacts of the proposed project and ultimately determine if an environmental impact statement (EIS) is warranted. (3-30-01)()

13. Facility Plan. A plan that describes the overall system, including sources of water, treatment processes and facilities, pumping stations and distribution piping, finished water storage, and waste disposal. It is a comprehensive planning document for the existing infrastructure and includes the plan for the future of the system/facility, including upgrades and additions. The plan also includes a systematic evaluation of feasible alternatives considering demographic, topographic, hydrologic and institutional characteristics of a project area to demonstrate that the selected alternative is cost effective and environmentally sound. A facility plan is sometimes referred to as a master plan or facilities planning study and is an overall system-wide plan as opposed to a project specific plan. A facility plan shall be prepared by or under the supervision of an Idaho licensed professional engineer and shall bear the imprint of the engineer's seal. Guidance on how to prepare a facility plan may be found in the Handbook. ()

14. Financial Capability. The ability to raise and manage funds to provide the necessary resources for proper operation. (3-30-01)

15. Finding Of No Significant Impact (FQNSI). A document prepared by the Department briefly presenting the reasons why an action, not otherwise excluded, will not have a significant effect on the human environment and for which an environmental impact statement (EIS) will not be prepared. It shall include the environmental ~~assessment~~ information document or a summary of it and shall note any other environmental documents related to it. (3-30-01)()

16. Handbook. "Drinking Water Loan ~~Account~~ Handbook of Procedures." (3-30-01)()

17. Ineligible Costs. Costs which are described in Subsection 032.06. (5-3-03)

18. Maximum Contaminant Level (MCL). The maximum permissible level of a contaminant in water which is delivered to any user of a public drinking water system. (3-30-01)

19. Managerial Capability. The capabilities of the qualified entity to support the proper financial management and technical operation of the system. (3-30-01)

20. ~~Municipality.~~ ~~Any county, city, special service district, nonprofit corporation or~~

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

~~other governmental entity having authority to dispose of sewage, industrial wastes, or other wastes, or to provide for safe drinking water, any Indian tribe or authorized Indian tribal organization, or any combination of two (2) or more of the foregoing acting jointly, in connection with an eligible project.~~ (3-30-01)

240. Noncommunity Water System. A public water system that is not a community water system. (5-3-03)

221. Nonprofit Noncommunity Water System. A public drinking water system that is not a community water system and is governed by Section 501 of the Internal Revenue Code and includes, but is not limited to, state agencies, municipalities and nonprofit organizations such as churches and schools. (5-3-03)

232. Nontransient Noncommunity Water System—(NTNCWS). A public drinking water system that is not a community water system and that regularly serves at least twenty-five (25) of the same persons over six (6) months per year. (3-30-01)()

243. Person. An individual, corporation, company, association, partnership, state agency, municipality, or federal agency (and includes officers, employees, and agents of any corporation, company, association, state agency, municipality, or federal agency). (5-3-03)

254. Priority List. A list of proposed projects rated ~~according to the priority rating system~~ by severity of a risk to public health, the necessity to ensure compliance with, IDAPA 58.01.08, “Idaho Rules for Public Drinking Water Systems,” and the Safe Drinking Water Act, 42 U.S.C., Sections 300f et seq., ~~and population affected~~, the need on a household basis ~~and~~ for protection of Idaho’s public drinking water supplies, and as otherwise described in Section 020. (3-30-01)()

265. Public Drinking Water System/Public Water System/Water System. A system for the provision to the public of water for human consumption through pipes or, after August 5, 1998, other constructed conveyances, if such system has at least fifteen (15) service connections, regardless of the number of water sources or configuration of the distribution system, or regularly serves an average of at least twenty-five (25) individuals daily at least sixty (60) days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under the control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A public water system is either a “community water system” or a “noncommunity water system.” (3-30-01)()

~~a. In General. A system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least fifteen (15) service connections or regularly serves an average of at least twenty five (25) individuals daily at least sixty (60) days out of the year. Such term includes:~~ (3-30-01)

~~i. Any collection, treatment, storage, and distribution facilities under control of the operator of such system, and used primarily in connection with such system; and~~ (3-30-01)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

~~ii. Any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. A public drinking water system is either a "community water system" or a "noncommunity water system."~~ (3-30-01)

~~b. Connections. For purposes of paragraph a. of this subsection, a connection to a system that delivers water by a constructed conveyance other than a pipe shall not be considered a connection, if:~~ (5-3-03)

~~i. The water is used exclusively for purposes other than residential uses (consisting of drinking, bathing, and cooking, or other similar uses);~~ (3-30-01)

~~ii. The Director determines that alternative water to achieve the equivalent level of public health protection provided by the applicable national primary drinking water regulation is provided for residential or similar uses for drinking and cooking; or~~ (3-30-01)

~~iii. The Director determines that the water provided for residential or similar uses for drinking, cooking, and bathing is centrally treated or treated at the point of entry by the provider, a pass-through entity, or the user to achieve the equivalent level of protection provided by the applicable national primary drinking water regulations.~~ (3-30-01)

~~e. Irrigation Districts. An irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use shall not be considered to be a public drinking water system if the system or the residential or similar users of the system comply with subparagraphs b.ii. and b.iii. of this subsection.~~ (5-3-03)

276. Qualifying Entity. ~~Community water systems and nonprofit noncommunity water systems. Any county, city, special service district, nonprofit or investor-owned corporation, or other governmental entity, or a combination thereof, which owns or operates a public drinking water system or irrigation system.~~ (3-30-01)()

287. Rehabilitation. The repair or replacement of segments of drinking water facilities. (3-30-01)

298. Reserve Capacity. That portion of the system in the planned facilities to handle future drinking water demand. (3-30-01)

3029. State. The state of Idaho. (3-30-01)

340. Suspension. An action by the Director to suspend a grant contract prior to project completion for a specified cause. Suspended contracts may be reinstated. (3-30-01)

321. Technical Capability. The ability of the public drinking water system to comply with existing and expected drinking water rules. (3-30-01)

332. Termination. An action by the Director to permanently terminate a grant contract prior to project completion for a specific cause. Terminated contracts will not be reinstated. (3-30-01)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

33. User Charge System. A system of rates and service charges applicable to specific types of users, including any legal enforcement mechanism as may be required, and which provides sufficient reserves and/or revenues for debt retirement, operation and maintenance, and replacement of the public drinking water system. ()

34. Unreasonable Risk to Health (URTH). Refers to a level of contamination that presents an “unreasonable risk to health” and is determined on a contaminant by contaminant basis by the U.S. Environmental Protection Agency. (5-3-03)

35. Water Treatment Plant. That portion of the public drinking water system whose primary purpose is to remove contaminants. (3-30-01)

011. -- 019. (RESERVED).

020. PRIORITY RATING SYSTEM.

Projects are identified for placement on priority lists by surveying eligible entities directly on an annual basis. Information is also received from the Department and consulting engineers. ~~Limited~~ Grant funds are awarded to projects based on priority ratings. Projects are rated by the Department on a standard priority rating form using public health and water quality criteria and condition of the existing system. (5-3-03)()

01. Purpose. A priority rating system shall be utilized by the Department to annually allot available funds to projects determined eligible for funding assistance ~~under the Drinking Water Grant Program~~ in accordance with these rules. (5-3-03)()

02. Priority Rating. Priority criteria shall contain the following points: (3-30-01)

a. Public Health Emergency. Shall be ~~certified~~ by the ~~Department~~ Idaho Board of Environmental Quality or by a District Board of Health. Such emergencies shall be related to a waterborne outbreak, chemical or radiological contamination levels above Unreasonable Risk to Health (URTH), or a failed water source - one hundred (100) points. (3-30-01)()

b. Public Health Hazard. Identified and ~~verified~~ documented by the Department or by a District Health Department. Points shall be given based on the presence and severity of waterborne illnesses - nineteen (19) points. (3-30-01)()

c. Water Quality Violations. Identified and verified by the Department. Points shall be given, based on maximum contaminant levels (MCLs) or based on treatment technique violations, for microbiological and chemical constituents - seventy-one (71) points. (3-30-01)

d. General Conditions of Existing Facilities. Points shall be given based on deficiencies with facilities for pumping, treating, storing, and delivering drinking water - sixty-one (61) points. (3-30-01)

e. Overall Urgency. Points shall be given to entities that need a new source of water to assure safety and adequate supply - ten (10) points. (3-30-01)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

f. Consent or Administrative Orders. Points shall be given if the system is operating under an order - thirty (30) points. (3-30-01)

g. Incentives. Bonus points shall be awarded to systems that promote source water protection, conservation, economy, proper operation maintenance, and monitoring - sixteen (16) points. (3-30-01)

h. Affordability. Points shall be given when current system user charges exceed state affordability guidelines - ten (10) points. (3-30-01)

03. Priority List. A list shall be developed annually from projects rated according to the priority rating system. Such list shall be submitted for public review and comment, and shall thereafter be submitted to the Board for approval and adoption. (3-30-01)

04. Priority Reevaluation. Whenever significant changes occur, which in the Department's judgment would affect the design parameters or treatment requirements by either increasing or decreasing the need for or scope of any project, a reevaluation of that priority rating will be conducted. (3-30-01)

05. Priority Target Date. A qualifying entity whose project is on the ~~adopted~~ approved list will be contacted by the Department and a target date for submission of a completed grant application will be established. (3-30-01)(____)

06. Project Bypass. A project that does not or will not meet the project target date or a Department schedule that allows for timely utilization of grant funds may be bypassed, substituting in its place the next highest ranking project that is ready to proceed. A qualifying entity that is bypassed will be notified in writing of the reasons for being bypassed. (3-30-01)

021. -- 029. (RESERVED).

030. PROJECT FUNDING.

Grant funds awarded under this program will be used entirely to prepare an engineering report or facility plan which identifies the ~~most~~ cost effective, and environmentally sound drinking water system alternative to achieve or maintain compliance with ~~the Idaho Rules for Public Drinking Water Systems~~, IDAPA 58.01.08, "Idaho Rules for Public Drinking Water Systems," and the Safe Drinking Water Act, 42 U.S.C.; Sections 300f et seq., and which is approvable by the Department. (3-30-01)(____)

01. Engineering Report or Facility Plan. (3-30-01)(____)

a. ~~Step 1.~~ The engineering report ~~will be prepared in accordance with Chapter 5 of the Handbook and~~ or facility plan shall be certified by an registered Idaho licensed professional engineer ~~licensed in the state of Idaho~~. The engineering report ~~will~~ or facility plan shall include, as a minimum, the following: (5-3-03)(____)

i. Description of existing conditions for the proposed project area; (3-30-01)

ii. Description of future conditions for the proposed project area; (3-30-01)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

- iii. Development and initial screening of alternatives; (3-30-01)
 - iv. Final screening of principal alternatives and plan adoption; (3-30-01)
 - v. Selected plan description and implementation arrangements; (3-30-01)
 - vi. Relevant engineering data supporting the final alternative; and (3-30-01)
 - vii. ~~Environmental information document (EID)~~ Level of environmental review specified by the Department as described in Section 040. ~~(3-30-01)~~()
- b.** The engineering report or facility plan must be reviewed and approved by the Department. ~~(3-30-01)~~()
- c.** The planning period shall be twenty (20) years for all facilities except for distribution and transmission systems which may be forty (40) years. ~~(3-30-01)~~()
- d.** ~~The most cost effective environmentally sound alternative may be selected based in part on public comments received from a~~ At least one (1) public hearing attended by intended users shall be held within the jurisdiction of the grantee and shall be conducted in accordance with state law. The cost effective and environmentally sound alternative selected shall be based in part on public comments received from intended users affected by the proposed project. ~~(3-30-01)~~()

02. Limitation on Funding Assistance. The maximum grant funding provided in a state planning grant award shall not exceed fifty percent (50%) of the total eligible costs for grants awarded. (3-30-01)

031. LIMITATION ON PRE-GRANT ENGINEERING REVIEWS.

Pre-grant engineering documents prepared by consulting engineers will be reviewed by Department staff only when accompanied by a certificate that the consulting engineer carries professional liability insurance in accordance with Subsection 050.05.d. (5-3-03)

032. REVIEW AND EVALUATION OF GRANT APPLICATIONS.

01. Submission of Application. Those eligible systems which received high priority ranking shall be invited to submit an application. The applicant shall submit to the Department, a completed application in a form prescribed by the Department. (3-30-01)

02. Application Requirements. Applications shall contain the following documentation, as applicable: (5-3-03)

a. An authorizing resolution passed by a majority of the governing body authorizing an elected official or officer of the qualifying entity to commit funding; and (5-3-03)

b. Contracts for engineering services or other technical services and the description of costs and tasks set forth therein shall be in sufficient detail for the Department to determine

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

whether the costs associated with the tasks are eligible costs pursuant to Section 0323; and

(5-3-03)()

c. A plan of study describing the work tasks to be performed in the engineering report or facility plan; and

(5-3-03)()

d. Justification for the engineering firm selected. An engineering firm selected by the applicant must at a minimum:

(5-3-03)

i. Be procured through the selection guidelines and procedures prescribed under Section 67-2320, Idaho Code; and

(5-3-03)

ii. Be a registered professional engineer currently licensed by the Idaho Board of Professional Engineers and Land Surveyors; and

(5-3-03)

iii. Not be debarred or otherwise prevented from providing services under another federal or state financial assistance program; and

(5-3-03)

iv. Be covered by professional liability insurance in accordance with Subsection 050.05.d. A certification of liability insurance shall be included in the application; and

(5-3-03)

e. A description of other costs, not included in the contracts for engineering or other technical services, for which the applicant seeks funding. The description of the costs and tasks for such costs must be in sufficient detail for the Department to determine whether the costs are eligible costs pursuant to Section 0323; and

(5-3-03)()

f. A demonstration that the obligation to pay the costs for which funding is requested, is the result or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 50-341 59-1026, and 42-3212, Idaho Code; and

(5-3-03)()

g. A statement regarding how the non-grant portion of the project will be funded; and

(5-3-03)

h. For incorporated nonprofit applicants only, Articles of Incorporation and/or Bylaws showing nonprofit and incorporated status according to Chapter 3, Title 30, Idaho Code.

(3-30-01)

03. Determination of Completeness of Application. Applications will be reviewed to determine whether they contain all of the information required by Subsection 032.02. (5-3-03)

04. Notification Regarding Incompleteness of Application. Written notification if an application is incomplete, including an explanation of missing documentation, will be sent to the applicant. The applicant may provide the missing documentation. (5-3-03)

05. Reapplication for Grant. The action of disapproving, recalling, or terminating a grant in no way precludes or limits the former applicant from reapplying for another grant when

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

the project deficiencies are resolved and project readiness is secured. (5-3-03)

033. DETERMINATION OF ELIGIBILITY OF COSTS.

The Department shall review the application, including any contracts required to be submitted with the application, to determine whether the costs are eligible costs for funding. (5-3-03)

01. Eligible Costs. Eligible costs are those determined by the Department to be: (5-3-03)

a. Necessary for planning drinking water treatment facilities; (5-3-03)

b. Reasonable; and (5-3-03)

c. Costs that are not ineligible as described in Subsection 032.06. (5-3-03)

02. Necessary Costs. The Department shall determine whether costs are necessary by comparing the tasks for which the costs will be incurred to the scope of the project as described in the plan of study for the engineering report or facility plan. ~~(5-3-03)~~(____)

03. Reasonable Costs. Costs shall be determined by the Department to be reasonable if the obligation to pay the costs is the result of or will be the result of the applicant's compliance with applicable competitive bidding requirements and requirements for professional service contracts, including without limitation, the requirements set forth in Sections 67-2801 et seq., 67-2320, 59-1026, and 42-3212, Idaho Code. ~~(5-3-03)~~(____)

04. Examples of Costs That May Be Eligible. Examples of costs that may be eligible, if determined necessary, reasonable and not ineligible costs include: (5-3-03)

a. Costs of salaries, benefits, and expendable material the qualified entity incurs in the project except ordinary expenses ~~of local government~~ such as salaries and expenses of a mayor; city council members; board; or a city, district or board attorney; ~~(5-3-03)~~(____)

b. Professional and consulting services utilizing a lump-sum contract, specifying costs of individual tasks. (5-3-03)

c. Engineering costs pursuant to a lump-sum contract, specifying costs of individual tasks, directly related to the planning of public drinking water treatment, storage and distribution facilities including but not limited to the preparation of an engineering report or facility plan and environmental review report; ~~(5-3-03)~~(____)

d. Financial, technical and management capability analysis; (5-3-03)

e. Public participation for alternative selection; (5-3-03)

f. Certain direct and other costs as determined eligible by the Department; and (5-3-03)

g. Site acquisition services which could include legal fees, appraisals and surveys for

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

land associated with the cost-effective alternative in the report and for land for purchase through future State Revolving Fund loan funding. (5-3-03)

05. Ineligible Project Costs. Costs which are ineligible for funding include, but are not limited to: (5-3-03)

- a. Basin or area wide planning not directly related to the project; (5-3-03)
- b. Personal injury compensation or damages arising out of the project; (5-3-03)
- c. Fines or penalties due to violations of, or failure to comply with, federal, state, or local laws; (5-3-03)
- d. Costs outside the scope of the approved project; (5-3-03)
- e. Ordinary operating expenses ~~of local government~~, such as salaries and expenses of a mayor, city council members, ~~or~~ city attorney, district or association personnel costs, and acquiring project funding; (5-3-03)()
- f. Preparation of a grant application; (5-3-03)
- g. All costs related to assessment, defense and settlement of disputes; (5-3-03)
- h. Costs of supplying required permits or waivers; (5-3-03)
- i. Costs incurred prior to award of the grant unless specifically approved in writing as eligible pre- award costs by the Department; (5-3-03)
- j. Engineering costs incurred prior to approval of the engineering contract or those costs in excess of the contract ceiling unless preapproval has been given in writing by the Department; and (5-3-03)
- k. Land acquisition costs and associated costs other than those listed as eligible in Subsection 032.05.g. (5-3-03)

06. Notification Regarding Ineligible Costs. Prior to providing a grant offer, the Department shall notify the applicant that certain costs are not eligible for funding and the reasons for the Department's determination. If such costs are included in the engineering contract, the Department shall also provide notification to the engineer. The applicant may provide the Department additional information in response to the notice. (5-3-03)

07. Eligible Costs and the Grant Offer. The grant offer shall reflect those costs determined by the Department to be eligible costs. The grant offer, however, may include estimates of some eligible costs that have not yet been set, ~~such as construction costs~~. Actual eligible costs may differ from such estimated costs set forth in the grant offer. In addition, grant disbursements may be increased or decreased if eligible costs are modified. (5-3-03)()

034. -- 039. (RESERVED).

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY
Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701
PENDING RULE

040. ENVIRONMENTAL REVIEW.

01. ~~Overview of Process~~ Environmental Documentation. The applicant ~~will~~ shall complete an environmental ~~information document (EID)~~ review as part of and in conjunction with an engineering report or a facility plan. ~~The review will be done in accordance with Chapter 5 of the Handbook.~~ Guidance on how to complete an environmental review may be found in Chapter 5 of the Handbook. The applicant shall ~~also~~ consult with the Department at an early stage in the preparation of the engineering report or facility plan to determine the required level of environmental review. ~~The environmental information document (EID) will include, as a minimum, the following~~ Based on review of existing information and assessment of environmental impacts, the applicant shall complete one (1) of the following, per the Department's instruction: (3-30-01)()

a. ~~Description of purpose and need for proposed action~~ Submit a request for Categorical Exclusion (CE) with supporting backup documentation as specified by the Department; (3-30-01)()

b. ~~Description of the proposed alternative, including the proposed action~~ Prepare an Environmental Information Document (EID) in a format specified by the Department; or (3-30-01)()

c. ~~Description of the affected environment;~~ Prepare an Environmental Impact Statement (EIS) in a format specified by the Department. (3-30-01)()

~~d. Discussion of the environmental impacts of the proposed action;~~ (3-30-01)

~~e. The means to mitigate adverse environmental impacts;~~ (3-30-01)

~~f. Description of public participation process;~~ (3-30-01)

~~g. List of referenced documents;~~ (3-30-01)

~~h. List of agencies consulted; and~~ (3-30-01)

~~i. Mailing list of interested parties.~~ (3-30-01)

02. ~~Department Action~~ Categorical Exclusions. ~~Based on review of the environmental information document (EID), the Department shall~~ If the applicant requests a CE, the Department shall review the request and, based upon the supporting documentation, take one (1) of the following actions: (3-30-01)()

a. ~~Issue a Categorical Exclusion (CE) with supporting documentation;~~ Determine if an action is consistent with categories eligible for exclusion whereupon the Department shall issue a notice of CE from further substantive environmental review. Once the CE is granted for the selected alternative, the Department will publish a notice of CE in a local newspaper, following which the engineering report or facility plan can be approved; or (3-30-01)()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

b. ~~Issue a Finding of No Significant Impact (FNSI). The Department shall first issue a draft FNSI and allow a thirty (30) day public comment period before making its final decision regarding significant impacts; or~~ Determine if an action is not consistent with categories eligible for exclusion and that issuance of a CE is not appropriate. If issuance of a CE is not appropriate, the Department shall notify the applicant of the need to prepare an EID. (3-30-01)()

e. ~~Require the grantee to prepare an environmental impact statement (EIS). An EIS must be prepared when the Department determines the project will significantly affect the environment. A draft EIS must first be prepared and submitted to the Department. The applicant must also arrange for a thirty (30) day public comment period and a public hearing regarding the EIS. A final EIS following the public comment period must be submitted to the Department for approval.~~ (3-30-01)

03. Environmental Information Document Requirements. When an EID is required, the applicant shall prepare the EID in accordance with the following Department procedures: ()

a. Various laws and executive orders related to environmentally sensitive resources shall be considered as the EID is prepared. Appropriate state and federal agencies shall be consulted regarding these laws and executive orders. ()

b. A full range of relevant impacts, both direct and indirect, of the proposed project shall be discussed in the EID, including measures to mitigate adverse impacts, cumulative impacts, and impacts that shall cause irreversible or irretrievable commitment of resources.()

c. The Department shall review the draft EID and either request additional information about one (1) or more potential impacts, or shall draft a “finding of no significant impact” (FONSI). ()

04. Final Finding Of No Significant Impact. The Department shall publish the draft FONSI in a newspaper of general circulation in the geographical area of the proposed project and shall allow a minimum thirty (30) day public comment period. Following the required period of public review and comment, and after any public concerns about project impacts are addressed, the FONSI shall become final. The Department shall assess the effectiveness and feasibility of the mitigation measures identified in the FONSI and EID prior to the issuance of the final FONSI and approval of the engineering report or facility plan. ()

05. Environmental Impact Statement (EIS) Requirements. If an EIS is required, the applicant shall: ()

a. Contact all affected state agencies, and other interested parties, to determine the required scope of the document; ()

b. Prepare and submit a draft EIS to all interested agencies, and other interested parties, for review and comment; ()

c. Conduct a public hearing which may be in conjunction with an engineering report or facility plan hearing; and ()

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

d. Prepare and submit a final EIS incorporating all agency and public input for Department review and approval. ()

06. Final EIS. Upon completion of the EIS by the applicant and approval by the Department of all requirements listed in Subsection 040.05, the Department shall issue a record of decision, documenting the mitigative measures which shall be required of the applicant. The engineering report or facility plan can be completed once the final EIS has been approved by the Department. ()

037. Use of Environmental Reviews ~~Prepared~~ Conducted by Other Agencies. If an environmental review for the project has been conducted by another state, federal, or local agency, the Department may, ~~in~~ at its discretion, issue its own determination by adopting the document and public notification process of the other agency. (~~3-30-01~~)()

048. Validity of Review. Environmental reviews are valid for five (5) years. If a grant application is received for a project with an environmental review which is more than five (5) years old, the Department shall reevaluate the project, environmental conditions, and public comments and shall: (3-30-01)

a. Reaffirm the earlier decision; or (3-30-01)

b. Require supplemental information to the earlier Environmental Impact Statement, Environmental Information Document, or request for Categorical Exclusion. Based upon a review of the updated document, the Department shall issue and distribute a revised notice of Categorical Exclusion, finding of no significant impact, or record of decision. (3-30-01)

041. -- 049. (RESERVED).

050. GRANT OFFER AND ACCEPTANCE.

01. Grant Offer. Grant offers will be delivered by certified mail to applicants who received high priority ranking, were invited to submit an application, and provided a complete application. (3-30-01)

02. Acceptance of Grant Offer. Applicants have sixty (60) days in which to officially accept the grant offer on prescribed forms furnished by the State. The sixty (60) day acceptance period commences from the date indicated on the grant offer notice. If the applicant does not accept the grant offer within the sixty (60) day period, the grant funds may be offered to the next project of priority. (3-30-01)

03. Acceptance Executed as a Contract Agreement. Upon signature by the Director or the Director's designee as the grantor, and upon signature by the authorized representative of the qualifying entity, as the grantee, the grant offer shall become a grant contract agreement. The disbursement of funds pursuant to an agreement is subject to a finding by the Director that the grantee has complied with all agreement conditions and has prudently managed the project. The Director may, as a condition of payment, require that a grantee vigorously pursue any claims it has against third parties who will be paid in whole or in part, directly or indirectly, with grant

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

funds or transfer its claim against such third parties to the Department. Grant contract agreements shall be interpreted according to the law of grants in aid. No third party shall acquire any rights against the State or its employees from a grant contract agreement. (3-30-01)

04. Estimate of Reasonable Cost. Each grant project contract will include the eligible cost of conducting the planning study. Some eligible costs may be estimated and payments may be increased or decreased as provided in Section 060. (5-3-03)

05. Terms of Agreement. The grant offer shall contain terms of agreement as prescribed by the Department including, but not limited to special conditions as determined necessary by the Department for the successful planning of the project. (3-30-01)

a. Terms consistent with this chapter; and (5-3-03)

b. Special clauses as determined necessary by the Department for the successful investigation and management of the project; and (5-3-03)

c. Terms consistent with applicable state and federal laws pertaining to engineering reports or facility plans; and ~~(5-3-03)~~(____)

d. Requirement for the prime engineering firm(s) ~~and their principals~~ retained for engineering services to carry professional liability insurance to protect the public from the engineer's negligent acts and errors of omission of a professional nature. The total aggregate of the engineer's professional liability shall be one hundred thousand dollars (\$100,000) or twice the amount of the engineer's fee, whichever is greater. Professional liability insurance must cover all such services rendered for all project steps, whether or not such services or steps are state funded, until the certification of project performance is accepted by the Department. ~~(5-3-03)~~(____)

051. -- 059. (RESERVED).

060. PAYMENTS.

01. Eligibility Determination. Grant funds will only be provided for eligible costs as defined at Section 010 and determined in accordance with Section 033. (5-3-03)

02. Payments for State Grants. Requests for payment shall be submitted to the Department on a form provided by the Department. The Department shall pay for those costs that are determined to be eligible. (3-30-01)

03. Grant Increases. Grant amendment increase requests as a result of an increase in eligible project costs will be considered, provided funds are available. Documentation and justification supporting the unavoidable need for a grant increase must be submitted to the Department for approval prior to incurring any costs above the approved eligible cost ceiling. (3-30-01)

04. Grant Decreases. If the actual eligible cost is determined to be lower than the estimated eligible cost the grant amount will be reduced proportionately. (3-30-01)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Administration/Planning Grants/Public Drinking Water Facilities

Docket No. 58-0122-0701

PENDING RULE

05. Final Project Review to Determine Actual Eligible Costs. The Department may conduct a final project review to determine the actual eligible costs. The financial records of the grantee may be reviewed by the Department. ~~The review may be deferred until the review of the design/construction loan is performed.~~ (3-30-01)(____)

06. Final Payment. The final payment consisting of five percent (5%) of the total state grant will not be made until the project review has been completed or deferred, or after final approval of the engineering, or completion of the environmental review process, ~~and the project review has been completed or deferred.~~ (3-30-01)(____)

061. -- 069. (RESERVED).

070. SUSPENSION OR TERMINATION OF GRANT.

01. Causes. The Director may suspend or terminate any grant for failure by the grantee or its agents, including his engineering firm(s), contractor(s) or subcontractor(s) to perform. A grant may be suspended or terminated for good cause including, but not limited to, the following: (3-30-01)

a. Commission of fraud, embezzlement, theft, forgery, bribery, misrepresentation, conversion, malpractice, misconduct, malfeasance, misfeasance, falsification or unlawful destruction of records, or receipt of stolen property, or any form of tortious conduct; or (3-30-01)

b. Commission of any crime for which the maximum sentence includes the possibility of one (1) or more years imprisonment or any crime involving or affecting the project; or (3-30-01)

c. Violation(s) of any term of agreement of the grant offer or contract agreement; or (3-30-01)

d. Any willful or serious failure to perform within the scope of the project, ~~plan of operation and project schedule, terms of engineering subagreements, or contracts for construction;~~ or (3-30-01)(____)

e. Debarment of an engineering firm, contractor or subcontractor for good cause by any federal or state agency from working on public work projects funded by that agency. (3-30-01)

02. Notice. The Director will notify the grantee in writing and by certified mail of the intent to suspend or terminate the grant. The notice of intent shall state: (3-30-01)

a. Specific acts or omissions which form the basis for suspension or termination; and (3-30-01)

b. That the grantee may be entitled to appeal the suspension or termination pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." (3-15-02)

SENATE RESOURCES & ENVIRONMENT COMMITTEE

DEPARTMENT OF ENVIRONMENTAL QUALITY

Docket No. 58-0122-0701

Administration/Planning Grants/Public Drinking Water Facilities

PENDING RULE

03. Determination. A determination will be made by the Board pursuant to IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality."

(3-15-02)

04. Reinstatement of Suspended Grant. Upon written request by the grantee and evidence that the cause(s) for suspension no longer exist, the Director may, if funds are available reinstate the grant.

(3-30-01)

05. Reinstatement of Terminated Grant. No terminated grant shall be reinstated.

(3-30-01)